III

PLAINTIFFS

4. The above-named plaintiffs, individually and on behalf of a class of persons similarly situated, are the following individuals and entities, who operate or have operated the following Shell or Texaco branded marketing premises and franchises at the following locations:

Plaintiffs Name	Station Brand	Leased Marketing Premises Yes/No	Station Location
Fouad N. Dagher	Shell	Yes	Dagher Shell #2 916 Santa Anita Arcadia, CA 91006
Bisharat Enterprises, Inc.	Shell	Yes	Arcadia Shell Service 25 East Foothill Boulevard Arcadia, CA 91006
Tinsal Enterprises, Inc.	Shell	Yes	Victoria Shell 2440 South Victoria Ventura, CA 93003
Alfred Buczkowski	Shell	Yes	Oakview Shell 905 North Ventura Avenue Oakview, CA 93022
Los Feliz Shell, Inc.	Shell	Yes	Los Feliz Shell, Inc. 3053 Los Feliz Boulevard Los Angeles, CA 90039
Nassim Hanna	Shell	Yes	Hanna Shell 1410 South Soto Street Los Angeles, CA 90023
Fouad N. Dagher	Shell	Yes	Dagher Shell #7 1401 South Garfield Alhambra, CA 91803

Esequiel Delgado	Shell	Yes	Delgado Shell Service 4357 East Brooklyn Avenue Los Angeles, CA 90022
Nasser El-Radi	Shell	Yes	Delamo Shell 5910 Dell Lakewood, CA 90713
Carlos Marquez	Shell	Yes	Marquez Shell #12 2600 Pellissier Place Industry, CA 91746
Fouad N. Dagher	Shell	Yes	Dagher Shell #5 5533 East Washington Blvd. Commerce, CA 90040
Tinsal Enterprises, Inc.	Shell	Yes	N. Hill Shell 16961 Devonshire Street Granada Hills, CA 91344
Fouad N. Dagher	Shell	Yes	Dagher Shell #10 1900 East Ceasar Chavez Los Angeles, CA 90033
Mahwash Farzaneh	Shell	Yes	Lawndale Shell 15808 S. Inglewood Lawndale, CA 90260
Fouad N. Dagher	Shell	Yes	Dagher Shell #4 2219 Garfield Monterey Park, CA 91754
Nasser El-Radi	Shell	Yes	Shell 4U 430 Petrogrande Monterey Park, CA 91754
Carlos Marquez	Shell	Yes	Marquez Shell #7 3701 East Valley Boulevard West Covina, CA 91744

Nasser El-Radi	Shell	Yes	UR Shell 9305 East Firestone Downey, CA 90241
G.G.&R Petroleum, Inc.	Shell	Yes	Holiday Shell Service 800-M East Lugenia Avenue Redlands, CA 92374
H.J.F. Inc.	Shell	Yes	Simi Shell Food Mart 1120 East Los Angeles Avenue Simi Valley, CA 93065-2802
Kaleco, Co.	Shell	Yes	Camarillo Shell 1604 Ventura Boulevard Camarillo, CA 93010
Mike M. Madani	Texaco	No	South Bay Texaco 1700 Artesia Boulevard Redondo Beach, CA 90278
Quang Truong	Shell	Yes	Kathleen's Shell 4405 North Maine Avenue Baldwin Park, CA 91706
Fouad N. Dagher	Shell	Yes	Dagher Shell #13 8801 Lanewood Downey, CA 90240
Carlos Marquez	Shell	Yes	Marquez Shell #13 19910 Beach Boulevard La Mirada, CA 90638
Sami Merhi	Shell	Yes	Del Amo Shell 20225 South Avalon Carson, CA 90745

Steven Ray Vezerian	Shell	Yes	Steve's Shell Service 800 West Las Tunas Avenue San Gabriel, CA 91776
Guillermo Ramierez	Shell	Yes	West Covina Shell 801 South Glendora Avenue West Covina, CA 91790
Edgardo R. Parungao	Shell	Yes	Gardy's Shell Service 7511 East Rosecrans Avenue Paramount, CA 90723
Fouad N. Dagher	Shell	Yes	Dagher Shell #9 631 North Garfield Monterey Park, CA 91754
Sitara Management Corporation	Shell	Yes	Ventura/Shoup Shell 22330 Ventura Boulevard Woodland Hills, CA 91364
Paul E. Peterson	Shell	Yes	West Torrance Shell 20805 South Anza Avenue Torrance, CA 90503
Ron Abel Serv. Center, Inc.	Shell	Yes	Ron Abel's #2 21924 Devonshire Street Chatsworth, CA 90311
Jerry's Shell Serv. Center, Inc.	Shell	Yes	Jerry's Shell 5161 Van Nuys Boulevard Sherman Oaks, CA 91403
Guillermo Ramirez	Shell	Yes	Ramirez Shell Autocare 12004 East Ramona Boulevard El Monte, CA. 91732

Leopoloo Ramirez	Shell	Yes	Ramirez Shell 3660 North Puente Avenue Baldwin Park, CA 91706
Nazar Sheibaini	Texaco	Yes	Camarillo Texaco 256 Carmen Drive Camarillo, CA 93010

5. Each individually named plaintiff is a resident of the state of California and the Central District of California.

6. There are tens of thousands of individuals and/or entities, within the United States, too numerous to list every name in the case caption and, therefore, must be formed as a class in order to adequately litigate this action.

7. The representative Plaintiffs' claims are typical of the class generally. Plaintiffs, as named herein, share the exact same interests as the other members of the class and are able to fairly and adequately represent the interests of all members of the class.

8. The overall likelihood of individual Class Members prosecuting separate claims is remote at best. Individual members of the Class may or do not have a significant interest in individually controlling the prosecution of separate actions and the impact of such a scenario upon the judicial system would be a tremendous waste of judicial resources and may cause a crippling effect. Additionally, the prosecution of separate actions by individual Class Members would create a risk of inconsistent and varying adjudications concerning the subject of this action, which adjudications could establish incompatible standards of conduct for defendants under the laws alleged herein.

9. There is a well-defined community of interest in the questions of law and fact among the Plaintiffs, as named herein, and the Class Members. Questions of law and fact common to the members of the aforesaid Class predominate

over any questions which may affect only individual members, in that defendants have acted in a manner generally applicable to the entire Class.

10. Each corporate plaintiff is organized, exists, and doing business under the laws of the state of California, with its principal place of business located in the Central District of California.

11. Each plaintiff who currently operates Shell branded marketing premises, at all times relevant herein, has been in a franchise relationship with Shell Oil Co. or its assignee Equilon Enterprises LLC, and since approximately January 1998 has purchased wholesale Shell branded gasoline from Equilon for resale to the general public.

12. Each plaintiff who currently operates Texaco branded marketing premises, at all times relevant herein, has been in a franchise relationship with Texaco, Inc. or its assignee Equilon Enterprises LLC, and since approximately January 1998 has purchased wholesale Texaco branded gasoline from Equilon for resale to the general public.

IV

DEFENDANTS

Saudi Refining, Inc.

13. Defendant SAUDI REFINING, INC. ("Saudi") is a limited liability corporation with its headquarters and principal place of business in Houston, Texas. It is a corporate affiliate of Saudi Aramco, the state-owned oil company of the Kingdom of Saudi Arabia, the principal member of OPEC, the international oil cartel.

14. Saudi is, and at all times relevant herein, has been directly or indirectly engaged in the business of exploring for and producing crude oil, transporting crude oil, and refining, transporting, storing, and marketing petroleum products, including gasoline, in the United States.

15. Saudi, as part of Saudi Aramco, is one of the world's leading oil and natural gas producers, with substantial manufacturing, transportation and marketing functions.

16. The Chairman of Saudi met with the Chairmen of Shell and Texaco for the purpose of forming and organizing a combination with Shell and Texaco in the refining and marketing of gasoline.

17. The Chairman of Saudi knew and understood that the effect of the agreement with Shell and Texaco would be the elimination of competition between and among Saudi, Texaco and Shell in the refining and marketing of gasoline in the United States.

18. The Chairman of Saudi knew and understood that the agreement with Shell and Texaco was an agreement among competitors to fix the price of gasoline sold to the independent Texaco and Shell retail dealers.

19. The Chairman of Saudi knew and understood that the agreement with Shell and Texaco was an agreement among competitors to divide markets in the United States.

20. The Chairman of Saudi knew and understood that the agreement with Shell and Texaco was an agreement among competitors to divide customers in the United States.

21. Saudi in fact combined with Shell and Texaco to fix the price of gasoline sold to the independent Shell and Texaco retail dealers in the United States.

22. Saudi in fact combined with Shell and Texaco to divide markets in the United States.

23. Saudi in fact combined with Shell and Texaco to divide customers in the United States.

Shell Oil Co.

24. Defendant SHELL OIL COMPANY ("Shell") is a corporation organized, existing, and doing business under the laws of the state of Delaware, with its headquarters and principal place of business at One Shell Plaza, Houston,

Texas. Shell is a subsidiary of the Royal Dutch/Shell Group which is composed of Royal Dutch Petroleum Company (domiciled in the Netherlands) and The "Shell" Transport and Trading Company (domiciled in the United Kingdom).

25. Shell is, and at all times relevant herein, has been engaged in the business of exploring for and producing crude oil, transporting crude oil, and refining, transporting, storing, and marketing petroleum products, including gasoline, in the state of California and throughout the United States.

26. Shell, as part of Royal Dutch/Shell Group, is one of the world's leading oil and natural gas producers, with substantial manufacturing, transportation and marketing functions.

27. The Chairman of Shell met with the Chairmen of Saudi and Texaco for the purpose of forming and organizing a combination with Saudi and Texaco in the refining and marketing of gasoline.

28. The Chairman of Shell knew and understood that the effect of the agreement with Saudi and Texaco would be the elimination of competition between and among Saudi, Texaco and Shell in the refining and marketing of gasoline in the United States.

29. The Chairmen of Shell knew and understood that the agreement with Saudi and Texaco was an agreement among competitors to fix the price of gasoline sold to the independent Texaco and Shell retail dealers.

30. The Chairman of Shell knew and understood that the agreement with Saudi and Texaco was an agreement among competitors to divide markets in the United States.

31. The Chairman of Shell knew and understood that the agreement with Saudi and Texaco was an agreement among competitors to divide customers in the United States.

32. Shell in fact combined with Saudi and Texaco to fix the price of gasoline sold to the independent Shell and Texaco retail dealers in the United States.

33. Shell in fact combined with Saudi and Texaco to divide markets in the United States.

34. Shell in fact combined with Saudi and Texaco to divide customers in the United States.

Texaco, Inc.

35. Defendant, TEXACO, INC. ("Texaco") is a corporation organized, existing, and doing business under the laws of the state of Delaware, with its headquarters and principal place of business at 2000 Westchester Avenue, White Plains, New York.

36. Texaco is, and at all times relevant herein, has been engaged in the business of exploring for and producing crude oil, transporting crude oil, and refining, transporting, storing, and marketing petroleum products, including gasoline, in the State of California and throughout the United States.

37. Texaco is one of the world's leading oil and natural gas producers, with substantial manufacturing, transportation and marketing functions.

38. The Chairman of Texaco met with the Chairmen of Saudi and Shell for the purpose of forming and organizing a combination with Saudi and ~~Texaco~~ Shell in the refining and marketing of gasoline.

39. The Chairman of Texaco knew and understood that the effect of the agreement with Saudi and Shell would be the elimination of competition between and among Saudi, Texaco and Shell in the refining and marketing of gasoline in the United States.

40. The Chairmen of Texaco knew and understood that the agreement with Saudi and Shell was an agreement among competitors to fix the price of gasoline sold to the independent Texaco and Shell retail dealers.

41. The Chairman of Texaco knew and understood that the agreement with Saudi and Shell was an agreement among competitors to divide markets in the United States.

42. The Chairman of Texaco knew and understood that the agreement with Saudi and Shell was an agreement among competitors to divide customers in the United States.

43. Texaco in fact combined with Saudi and Shell to fix the price of gasoline sold to the independent Shell and Texaco retail dealers in the United States.

44. Texaco in fact combined with Saudi and Shell to divide markets in the United States.

45. Texaco in fact combined with Saudi and Shell to divide customers in the United States.

Equilon Enterprises LLC

46. Defendant EQUILON ENTERPRISES LLC ("Equilon") is a limited liability corporation with its headquarters and principal place of business in Houston, Texas.

47. Equilon is a combination between Texaco and Shell that combines their western and mid-western refining, transportation, terminal (storage), and marketing operations and assets. Shell owns 56 percent of Equilon, and Texaco owns the other 44 percent.

48. Equilon began operating during January 1998. Since that time, it has been in the business of refining, transporting, storing, and marketing petroleum products, including gasoline, in the state of California and other western and mid-western states.

49. Equilon refines and markets gasoline and other petroleum products under both the Shell and Texaco brand names in all or parts of 32 states, selling products to 9,002 Shell and Texaco retail outlets.

50. Equilon is the fourth largest retail gasoline marketer and the fourth largest refiner in the United States.

51. Equilon's annual gross revenue is approximately $22 billion.

52. Equilon is number one in market share in Oregon, Arizona, Nebraska, Oklahoma, Missouri, Arkansas and Kentucky. Equilon is number two in market share in Alaska, Hawaii, California, Nevada, Idaho, Wyoming, Colorado, New Mexico, Indiana and Illinois.

53. Equilon has seven refineries, refining approximately 846,000 barrels per day. Equilon owns 76 terminals for crude oil and refined products in the United States.

54. Equilon owns an interest, with its competitors, in 45,600 miles of pipeline throughout the United States.

55. Equilon is a combination, in the form of a trust or otherwise, used by Shell and Texaco to fix the price of gasoline sole to the independent Shell and Texaco retail dealers in the western and midwestern states of the United States.

Motiva Enterprises LLC

56. Defendant MOTIVA ENTERPRISES LLC ("Motiva") is a limited liability corporation with its headquarters and principal place of business in Houston, Texas.

57. Motiva is a combination between Texaco, Saudi, and Shell that combines their eastern United States and Gulf Coast refining, transportation, terminal (storage), and marketing operations and assets. Shell owns 35 percent of Motiva, and Texaco and Saudi each own 32.5 percent.

58. Motiva began operations during July 1998. Since that time, Motiva has been in the business of refining, transporting, storing, and marketing petroleum products, including gasoline, in the Gulf Coast and eastern United States.

59. Motiva refines and markets gasoline under the Shell and Texaco brand names in 27 states of the United States, selling products to 13,900 Shell and Texaco retail outlets.

60. Motive is the second largest retail gasoline marketer and the eighth largest refiner in the United States.

61. Motiva's annual gross revenue is approximately $11 billion.

62. Motiva is number one in market share in Texas, Louisiana, Alabama, Mississippi, Tennessee, Florida, North Carolina, Rhode Island, New Jersey, Maryland and Delaware.

63. Motiva is number two in market share in Georgia, Virginia, Pennsylvania, New Hampshire, Vermont, Massachusetts and Connecticut.

64. Motiva has four refineries, refining approximately 819,000 barrels per day. Motiva has 50 terminals for crude oil and refined products in the United States.

65. Motiva is a combination, in the form of a trust or otherwise, used by Saudi, Texaco and Shell to fix the price of gasoline sold to the independent Shell and Texaco retail dealers in the eastern and Gulf coast states of the United States.

Equiva Trading Co.

66. Defendant EQUIVA TRADING COMPANY ("Equiva Trading") is a general partnership headquartered in Houston, Texas, with offices in Universal City and Burbank, California; and Calgary, Canada.

67. Equilon and Motiva are the general partners in Equiva Trading, each having a 50 percent interest. Equiva Trading became operational in July 1998 and provides supply and trading services to Equilon, Motiva and affiliates of Texaco and Shell.

68. Equiva Trading was formed with the purpose and effect of eliminating competition in the supply and trading services to the Equilon and Motiva combines, and to the affiliates of Saudi, Texaco and Shell.

Equiva Services LLC

69. Defendant EQUIVA SERVICES LLC ("Equiva Services") is a limited liability corporation with its

headquarters and principal place of business in Houston, Texas.

70. Equiva Services is 50 percent owned by Equilon and 50 percent owned by Motiva. It began operations in July 1998, and provides economic and business research, facilities management, financial, human resources, information technology, legal, marketing, and safety, health and environmental services for Equilon and Motiva.

71. Equiva Services was formed with the purpose and effect of eliminating competition in services provided to the Equilon and Motiva combines, and to the affiliates of Saudi, Texaco and Shell.

V

CO-CONSPIRATORS

72. Plaintiffs are informed and believe that persons whose identities are at this time unknown have engaged with defendants in the violations alleged herein. Plaintiffs may at a later time amend this complaint to add said unknown co-conspirators as defendants when and if they become known.

VI

THE SHELL/TEXACO/SAUDI COMBINATIONS

73. In or about October 1996, at a place and time unknown to plaintiffs. Saudi, Shell and Texaco met and entered into an agreement to raise, fix, peg, and stabilize prices.

74. In or about October 1996, Saudi, Shell and Texaco formed their combinations, combining their refining, transportation, terminal (storage), and marketing operations and assets in the United States.

75. On or about March 1997, Shell and Texaco entered into a Memorandum of Understanding regarding the formation of a combination to be known as "Westco," which later was renamed "Equilon." Westco was to be organized as a limited liability corporation into which Texaco and Shell

would contribute their refining, transportation, terminal (storage), and marketing operations and assets in the western and mid-western United States (roughly corresponding with Petroleum Administration for Defense Districts ("PADDs") II, IV, and V).

76. On or about July 16, 1997, Shell, Texaco, and Saudi entered into a Memorandum of Understanding regarding the formation of a combination to be called "Eastco," which later was renamed "Motiva" Eastco was to be organized as a limited liability corporation into which Saudi, Shell, and Texaco would contribute their refining, transportation, terminal (storage), and marketing operations and assets in the Gulf Coast and eastern United States (roughly corresponding to PADDs I and III).

77. At some point during or after January 1998, Texaco and Shell sold, transferred or assigned to Equilon (formerly Westco) their interests in the marketing premises leased to plaintiffs, as well as their interests in and obligations under each plaintiff's franchise agreements.

78. With regard to those plaintiffs that operate leased marketing premises, prior to and after transferring those premises to Equilon, neither Shell nor Texaco made bona fide offers to sell, transfer, or assign their interests in the premises to plaintiffs.

79. Equilon was formed for the purpose and with the effect of eliminating competition between and among Saudi, Texaco and Shell in the refining and marketing of gasoline in the United States.

80. One of the purposes of Shell and Texaco in forming Equilon was to fix prices between themselves on gasoline sold to the independent Shell and Texaco branded dealers.

81. Shell and Texaco agreed that Equilon would fix the price at which gasoline is sold to the independent Shell and Texaco branded dealers in the western and mid-western states of the United States.

82. Equilon fixes the price at which gasoline is sold to the independent Shell and Texaco branded dealers in the western and mid-western states of the United States.

83. Motiva was formed for the purpose and with the effect of eliminating competition between and among Saudi, Texaco and Shell in the refining and marketing of gasoline in the United States.

84. One of the purposes of Saudi, Shell and Texaco in forming Motiva was to fix prices between and among themselves on gasoline sold to the independent Shell and Texaco branded dealers.

85. Saudi, Shell and Texaco agreed that Motiva would fix the price at which gasoline is sold to the independent Shell and Texaco branded dealers in the Gulf and east coast states of the United States.

86. Motiva fixes the price at which gasoline is sold to the independent Shell and Texaco branded dealers in the Gulf and east coast states of the United States.

VII

TRADE AND COMMERCE

87. The exploration, production, transportation, storage, refining, distribution, marketing, and selling of crude oil and gasoline is carried on in and substantially affects interstate and foreign commerce, and that the combination and conspiracy among and between Saudi, Texaco, and Shell, to fix the price of gasoline sold to retail dealers substantially affects, impedes, and unreasonably restrains the free flow of crude oil and gasoline between and among the various states of the United States, and foreign countries and the United States.

88. Entry into the refining and marketing of gasoline is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in those markets.

89. By reason of the violations alleged herein, plaintiffs have paid and continue to pay higher wholesale prices for

branded gasoline than they would in a free and competitive market.

90. Since the launch of the Equilon combination, wholesale and retail prices of gasoline sold in the slate of California have increased substantially.

91. During that same period, total statewide refinery production and inventories of gasoline rose compared to the same period in the previous year, refinery margins increased, and crude oil prices decreased.

92. Beginning at least during the last two years, crude oil prices, when adjusted for inflation, dropped to their lowest levels since the Great Depression of the 1930's.

93. During the time that crude oil prices were dropping to their lowest levels since the Great Depression, Saudi, Shell and Texaco, by and through Equilon and Motiva, agreed to and did in fact fix and raise the price of gasoline sold to the independent Shell and Texaco branded retail dealers.

94. Before Equilon and Motiva were formed, Saudi, Texaco and Shell were actual competitors.

95. Saudi, Shell and Texaco combined and conspired to form Motiva and Equilon as the means to fix prices on gasoline sold to the independent Shell and Texaco retail dealers.

96. Saudi, Shell and Texaco combined and conspired to form Motiva and Equilon as the means to divide markets and customers.

97. Saudi, Shell and Texaco did what they combined and conspired to do.

98. Motiva and Equilon combined, conspired and contracted to fix the price of gasoline sold to the independent Texaco and Shell dealers in the United States.

99. Motiva and Equilon combined, conspired and contracted to divide the markets in the United States.

100. Motiva and Equilon combined, conspired and contracted to divide customers in the United States.

101. Motiva and Equilon, as a combination, do the following:

(a) Market gasoline in all 50 states of the United States under both the Shell and Texaco brand names;

(b) Rank number one in national market share for branded gasoline, refining capacity and lubricant sales;

(c) Have annual gross revenue of approximately $33 billion;

(d) Provide product to 22,903 Texaco and Shell branded retail outlets;

(e) Own 11 refineries with a total refining capacity of 1,665,270 barrels per day;

(f) Own or have an interest in 126 crude oil and product terminals; and

(g) Have ownership interests with their competitors in 45,600 miles of pipeline.

102. By reason of the combination and conspiracy among Saudi, Texaco and Shell to fix prices by and through their combination, Equilon and Motiva, independent Shell and Texaco branded retailers paid more for their gasoline than they would have in a free and competitive market.

~~103. After acquiring plaintiffs' marketing premises and franchise agreements from Shell and Texaco, Equilon also imposed substantial rent increases upon each plaintiff operating leased marketing premises.~~

103. After acquiring plaintiffs' marketing premises and franchise agreements from Shell and Texaco, Equilon also imposed substantial rent increases upon each plaintiff operating leased marketing premises. In particular, prior to forming Equilon, both Shell and Texaco offered variable rent

programs, pursuant to which a dealer selling a specified amount of gasoline received a per gallon rebate or credit against station rent, and thereby a reduction in gasoline prices. After forming Equilon, acting in concert through Equilon, Shell and Texaco effectively eliminated their variable rent programs, so as to increase the price of gasoline to Shell and Texaco dealers. The foregoing conduct of defendants was an effort to coerce Shell and Texaco dealers to agree to raise the retail price of gasoline, and was part and in furtherance of defendants' agreement, combination, and conspiracy to fix, raise, stabilize, and peg the price of gasoline sold to Shell and Texaco dealers.

104. Furthermore, each plaintiff operating leased marketing premises has been deprived of an opportunity to acquire such premises. Franchisee ownership of marketing premises, as opposed to leasing such premises from a franchisor, substantially increases the value of a gasoline station business because it gives the owner-franchisee the freedom to negotiate arms length franchise agreements or supply contracts with any oil company franchisor on much better terms for the franchisee.

105. By reason of the violations alleged herein, plaintiffs and all persons similarly situated have sustained injury to their businesses and property in amounts yet to be ascertained, but including the loss of sales, profits, and business goodwill, increased rent, increased prices paid to defendants for gasoline and other petroleum products, the value of their businesses as going concerns, the increased costs of doing business, including any debts incurred.

106. Prior to the Equilon and other combinations outline above, Shell and Texaco were actual competitors.

VIII

SECTION 1 OF THE SHERMAN ACT

107. Each of the Equilon and Motiva combinations described hereinabove constitutes a contract, combination or conspiracy by Saudi, Shell and Texaco to raise, fix, peg, or

stabilize prices in *per se* violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. Section 1.

108. The Equilon and Motiva combinations constitute contracts, combinations or conspiracies between and among defendants, Saudi, Texaco, Shell, Equilon, Motiva, Equiva Trading and Equiva Services, to raise, fix, peg, or stabilize prices in per se violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. Sec. 1.

109. Each Chairman of Saudi, Texaco and Shell know of and approved of the price fixing agreement.

110. The Equilon and Motiva combinations constitute contracts, combinations or conspiracies between and among defendants, Saudi, Texaco, Shell, Equilon, Motiva, Equiva Trading and Equiva Services, to divide markets in per se violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. Section 1:

111. Each Chairman of Saudi, Texaco and Shell know of and approved of the agreement to divide markets.

112. The Equilon and Motiva combinations constitute contracts, combinations or conspiracies between and among defendants, Saudi, Texaco, Shell, Equilon, Motiva, Equiva Trading and Equiva Services, to divide customers in per se violation of Section 1 of the Sherman Antirust Act, 15 U.S.C. Section 1.

113. Each Chairman of Saudi, Texaco and Shell knew of and approved of the agreement to divide customers.

114. The overall conduct of defendants described above also constitutes a contract, combination or conspiracy to raise, fix, peg, or stabilize prices in *per se* violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. Sect. 1.

IX

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on behalf of themselves and all persons similarly situated pray for relief as follows:

(a) that the court adjudge and decree the instant action as a Class Action;

(b) that the jury find and this Court adjudge and decree that defendants have violated Section 1 of the Sherman Antitrust Act, 15 U.S.C. Sec. 1:

(c) that plaintiffs and Class Members recover actual damages as the jury shall find them to have sustained and that the damages be trebled pursuant to Section 4 of the Clayton Act;

(d) that the Court issue a permanent injunction dissolving Equilon, Motiva, Equiva Trading, and Equiva Services pursuant to Section 16 of the Clayton Act;

(e) that the Court issue a permanent injunction enjoining and prohibiting defendants from contracting, combining, and conspiring to raise, fix, peg, or stabilize prices;

(f) that the Court issue a permanent injunction enjoining and prohibiting defendants from contracting, combining, and conspiring to fix plaintiffs' rents at artificially high and noncompetitive levels;

(g) that the Court issue a permanent injunction requiring defendants to allow any dealer to rebrand, without any penalty;

(h) for a complete list of the names, addresses, and telephone numbers of the persons and/or entities who were and/or are a Shell and/or Texaco branded dealer nationwide who operate or have operated Shell or Texaco branded marketing premises and franchises throughout the United States and of those persons or entities who has purchased gasoline from Defendants MOTIVA ENTERPRISES LLC and/or EQUILON

ENTERPRISES LLC, or both since January 1998 to the present time.

(i) that the Court award plaintiffs their costs of suit herein, including reasonable attorneys' fees pursuant to Section 4 of the Clayton Act; and

(j) that the Court award plaintiffs and Class Members such other and further relief as it shall deem just and appropriate.

Dated: January 24, 2000

ALIOTO LAW FIRM
SHULMAN, WALCOTT & SHULMAN, P.A. LAW OFFICE OF JOHN H. BOONE BLEAU, FOX & ASSOCIATES, A.P.C.

By: /s/
Joseph M. Alioto, Esq.

DEMAND FOR JURY

NOTICE IS HEREBY GIVEN that the plaintiffs in the above-entitled ~~First~~ Second Amended action demand a trial by jury in the above-entitled action.

Dated: January 24, 2000

ALIOTO LAW FIRM
SHULMAN, WALCOTT & SHULMAN, P.A. LAW OFFICE OF JOHN H. BOONE BLEAU, FOX & ASSOCIATES, A.P.C.

By: /s/
Joseph M. Alioto, Esq.

[Proof of service omitted in printing]

[Filed Feb. 8, 2000]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Case caption omitted in printing]

ANSWER OF SHELL OIL COMPANY TO SECOND AMENDED COMPLAINT

Defendant SHELL OIL COMPANY ("Shell"), for itself alone, answers plaintiffs' "Second Amended Complaint for Damages and Injunctive Relief under the Antitrust Laws" (the "Complaint") as follows:

1. Shell admits that plaintiffs purport to bring this action on behalf of themselves and other entities and persons described in Paragraph 1. Except as expressly admitted or denied for lack of sufficient information herein, Shell denies the allegations of Paragraph 1.

2. Shell admits that plaintiffs purport to bring this action against the defendants named in Paragraph 2 and to demand a jury trial. Except as expressly admitted or denied for lack of sufficient information herein, Shell denies the allegations of Paragraph 2.

3. Shell admits that the United States District Courts have subject matter jurisdiction over actions brought under the Sherman Act. Except as expressly admitted or denied for lack of sufficient information herein, Shell denies the allegations of Paragraph 3.

4. Shell lacks sufficient information to admit or deny the allegations of Paragraph 4 and on that basis denies such allegations.

5. Shell lacks sufficient information to admit or deny the allegations of Paragraph 5 and on that basis denies such allegations.

6. Shell denies the allegations of Paragraph 6.

7. Shell denies the allegations of Paragraph 7.

8. Shell denies the allegations of Paragraph 8.

9. Shell denies the allegations of Paragraph 9.

10. Shell lacks sufficient information to admit or deny the allegations of Paragraph 10 and on that basis denies such allegations.

11. Shell lacks sufficient information to admit or deny the allegations of Paragraph 11 and on that basis denies such allegations.

12. Shell lacks sufficient information to admit or deny the allegations of Paragraph 12 and on that basis denies such allegations.

13. Shell lacks sufficient information to admit or deny the allegations of Paragraph 13 and on that basis denies such allegations.

14. Shell lacks sufficient information to admit or deny the allegations of Paragraph 14 and on that basis denies such allegations.

15. Shell lacks sufficient information to admit or deny the allegations of Paragraph 15 and on that basis denies such allegations.

16. Shell denies the allegations of Paragraph 16.

17. Shell lacks sufficient information to admit or deny the allegations of Paragraph 17 concerning any knowledge or understanding of the Chairman of Saudi and on that basis denies such allegations. Shell admits that Saudi, Texaco and Shell have formed a legitimate joint venture, reviewed by relevant government authorities, that engages in refining and marketing of gasoline and other petroleum products in portions of the United States. Except as expressly admitted or denied for lack of sufficient information herein, Shell denies the allegations of Paragraph 17.

18. Shell denies the allegations of Paragraph 18.

19. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 19. To the extent a

further response is deemed to be required, Shell denies the allegations of Paragraph 19.

20. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 20. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 20.

21. Shell denies the allegations of Paragraph 21.

22. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 22. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 22.

23. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 23. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 23.

24. Shell admits the allegations of Paragraph 24.

25. Shell admits that during certain time periods it and/or its subsidiaries and affiliates have engaged in the business of exploring for and producing crude oil, and have refined, marketed, transported, and stored crude oil and petroleum products, including gasoline, in certain states. Except as expressly admitted or denied for lack of sufficient information herein, Shell denies the allegations of Paragraph 25.

26. Shell admits that it and/or its subsidiaries and affiliates produce oil and natural gas and engage in manufacturing, transportation and marketing. Except as expressly admitted or denied for lack of sufficient information herein, Shell denies the allegations of Paragraph 26.

27. Shell denies the allegations of Paragraph 27.

28. Shell admits that Saudi, Texaco and Shell have formed a legitimate joint venture, reviewed by relevant government authorities, that engages in refining and marketing of gasoline and other petroleum products in portions of the United States. Except as expressly admitted or denied for

lack of sufficient information herein, Shell denies the allegations of Paragraph 28.

29. Shell denies the allegations of Paragraph 29.

30. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 30. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 30.

31. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 31. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 31.

32. Shell denies the allegations of Paragraph 32.

33. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 33. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 33.

34. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 34. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 34.

35. Shell admits the allegations of Paragraph 35.

36. Shell lacks sufficient information to admit or deny the allegations of Paragraph 36 and on that basis denies such allegations.

37. Shell lacks sufficient information to admit or deny the allegations of Paragraph 37 and on that basis denies such allegations.

38. Shell denies the allegations of Paragraph 38.

39. Shell lacks sufficient information to admit or deny the allegations of Paragraph 39 concerning any knowledge or understanding of the Chairman of Texaco and on that basis denies such allegations. Shell admits that Saudi, Texaco and Shell have formed a legitimate joint venture, reviewed by relevant government authorities, that engages in refining and

marketing of gasoline and other petroleum products in portions of the United States. Except as expressly admitted or denied for lack of sufficient information herein, Shell denies the allegations of Paragraph 39.

40. Shell denies the allegations of Paragraph 40.

41. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 41. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 41.

42. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 42. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 42.

43. Shell denies the allegations of Paragraph 43.

44. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 44. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 44.

45. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 45. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 45.

46. Shell admits the allegations of Paragraph 46.

47. Shell admits that Equilon is a joint venture formed by Texaco and Shell that refines and markets petroleum products in certain western and midwestern states, and that Shell and Texaco have 56 percent and 44 percent interests, respectively, in Equilon. Except as expressly admitted or denied for lack of sufficient information herein, Shell denies the allegations of Paragraph 47.

48. Shell admits the allegations of Paragraph 48.

49. Shell lacks sufficient information or belief to admit or deny the allegations of Paragraph 49, and on that basis denies such allegations.

50. Shell lacks sufficient information to admit or deny the allegations of Paragraph 50 and on that basis denies such allegations.

51. Shell denies the allegations of Paragraph 51.

52. Shell lacks sufficient information to admit or deny the allegations of Paragraph 52 and on that basis denies such allegations.

53. Shell lacks sufficient information to admit or deny the allegations of Paragraph 53, and on that basis denies such allegations.

54. Shell denies the allegations of Paragraph 54.

55. Shell denies the allegations of Paragraph 55.

56. Shell admits the allegations of Paragraph 56.

57. Shell admits that Motiva is a joint venture formed by Saudi, Texaco and Shell that refines and markets gasoline in certain eastern states, and that Shell, Texaco and Saudi have 35 percent, 32.5 percent and 32.5 percent interests, respectively, in Motiva. Except as expressly admitted or denied for lack of sufficient information herein, Shell denies the allegations of Paragraph 57.

58. Shell admits that Motiva began operations during July 1998 and has subsequently been in the business of refining, transporting, storing and marketing petroleum products, including gasoline, in certain eastern states. Except as expressly admitted or denied for lack of sufficient information herein, Shell denies the allegations of Paragraph 58.

59. Shell denies the allegations of Paragraph 59.

60. Shell lacks sufficient information to admit or deny the allegations of Paragraph 60 and on that basis denies such allegations.

61. Shell denies the allegations of Paragraph 61.

62. Shell lacks sufficient information to admit or deny the allegations of Paragraph 62 and on that basis denies such allegations.

63. Shell lacks sufficient information to admit or deny the allegations of Paragraph 63 and on that basis denies such allegations.

64. Shell lacks sufficient information to admit or deny the allegations of Paragraph 64 and on that basis denies such allegations.

65. Shell denies the allegations of Paragraph 65.

66. Shell admits the allegations of Paragraph 66.

67. Shell admits the allegations of Paragraph 67.

68. Shell denies the allegations of Paragraph 68.

69. Shell admits the allegations of Paragraph 69.

70. Shell admits the allegations of Paragraph 70.

71. Shell denies the allegations of Paragraph 71.

72. Shell denies the allegations of Paragraph 72.

73. Shell denies the allegations of Paragraph 73.

74. Shell denies the allegations of Paragraph 74.

75. Shell admits that, in or about March 1997, Shell and Texaco entered into a Memorandum of Understanding regarding the formation of a joint venture for refining and marketing of petroleum products in certain western and midwestern states, and that this joint venture was eventually named Equilon. Except as expressly admitted or denied for lack of sufficient information herein, Shell denies the allegations of Paragraph 75.

76. Shell admits that, on or about July 16, 1997, Shell, Texaco and Saudi entered into a Memorandum of Understanding regarding the formation of a joint venture for refining and marketing of petroleum products in certain eastern states, and that this joint venture was ultimately named Motiva. Except as expressly admitted or denied for

lack of sufficient information herein, Shell denies the allegations of Paragraph 76.

77. Shell denies the allegations of Paragraph 77.

78. Shell lacks sufficient information to admit or deny the allegations of Paragraph 78 with regard to actions by any other defendant herein, and on that basis denies such allegations. Shell admits that, prior to the formation of Equilon, it did not offer to sell its interest in any premises leased by a plaintiff to that plaintiff.

79. Shell denies the allegations of Paragraph 79.

80. Shell denies the allegations of Paragraph 80.

81. Shell denies the allegations of Paragraph 81.

82. Shell denies the allegations of Paragraph 82.

83. Shell denies the allegations of Paragraph 83.

84. Shell denies the allegations of Paragraph 84.

85. Shell denies the allegations of Paragraph 85.

86. Shell admits that, after the formation of Motiva, Motiva determined the prices at which it would sell gasoline to others. Except as expressly admitted or denied for lack of sufficient information herein, Shell denies the allegations of Paragraph 86.

87. Shell admits that some exploration, production, transportation, storage, refining, distribution, marketing and selling of crude oil and gasoline is carried on in and substantially affects interstate and foreign commerce. Except as expressly admitted or denied for lack of sufficient information herein, Shell denies the allegations of Paragraph 87.

88. Shell denies the allegations of Paragraph 88.

89. Shell denies the allegations of Paragraph 89.

90. Shell denies the allegations of Paragraph 90.

91. Shell lacks sufficient information to admit or deny the allegations of Paragraph 91 and on that basis denies such allegations.

92. Shell lacks sufficient information to admit or deny the allegations of Paragraph 92 and on that basis denies such allegations.

93. Shell denies the allegations of Paragraph 93.

94. Shell admits that Shell and Texaco competed in certain market(s) before the formation of Equilon and Motiva. Except as expressly admitted or denied for lack of sufficient information, Shell denies the allegations of Paragraph 94.

95. Shell denies the allegations of Paragraph 95.

96. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 96. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 96.

97. Shell denies the allegations of Paragraph 97.

98. Shell denies the allegations of Paragraph 98.

99. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 99. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 99.

100. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 100. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 100.

101. Shell denies the allegations of Paragraph 101.

102. Shell denies the allegations of Paragraph 102.

103. Shell denies the allegations of Paragraph 103.

104. Shell denies the allegations of Paragraph 104.

105. Shell denies the allegations of Paragraph 105.

106. Shell admits that Shell and Texaco competed in certain market(s) in the United States before the formation of Equilon. Except as expressly admitted or denied for lack of sufficient information herein, Shell denies the allegations of Paragraph 106.

107. Shell denies the allegations of Paragraph 107.

108. Shell denies the allegations of Paragraph 108.

109. Shell denies the allegations of Paragraph 109.

110. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 110. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 110.

111. Shell denies the allegations of Paragraph 111.

112. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 112. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 112.

113. By Order entered January 10, 2000, the Court dismissed the allegations in Paragraph 113. To the extent a further response is deemed to be required, Shell denies the allegations of Paragraph 113.

114. Shell denies the allegations of Paragraph 114.

FIRST AFFIRMATIVE DEFENSE

115. The Complaint and each purported claim therein fail to state facts sufficient to constitute a claim against Shell upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

116. Shell has at all times and in all relevant manners acted reasonably, as necessary to serve legitimate business purposes, in furtherance of trade, in good faith, and with the purpose and effect of promoting, encouraging, or increasing competition. Shell has not acted with the purpose or intent to suppress or restrain competition.

THIRD AFFIRMATIVE DEFENSE

117. Relevant government authorities reviewed the joint ventures that are the subject of the Complaint for any purported restraint on competition. The Federal Trade Commission entered into stipulated judgments with defendants herein in this regard. The instant Complaint is barred and/or preempted by the actions of the Federal Trade Commission with respect to the joint ventures.

FOURTH AFFIRMATIVE DEFENSE

118. The Complaint and each purported claim therein is barred by the doctrines of waiver, estoppel and laches in that plaintiffs have unreasonably and, on information and belief, intentionally, delayed to defendants' detriment in challenging the joint ventures that they now ask the Court dissolve.

FIFTH AFFIRMATIVE DEFENSE

119. Due to the unity of interest between and among the defendants, pursuant to the *Copperweld* doctrine, Shell is immune from claims that the actions alleged herein violate the Sherman Act.

SIXTH AFFIRMATIVE DEFENSE

120. Plaintiffs' claims and those of the purported class, and any recovery based thereon, are barred in whole or in part by plaintiffs' and the purported class members' failure to exercise due care to avoid, mitigate, or protect themselves from any damages that they allegedly sustained.

SEVENTH AFFIRMATIVE DEFENSE

121. Plaintiffs have no standing or capacity, individually or on behalf of the purported class, to maintain this action.

EIGHTH AFFIRMATIVE DEFENSE

122. Plaintiffs' Complaint is not a proper class action for a variety of reasons, including but not limited to the following: the purported class is not certifiable as such; Plaintiffs are not adequate representatives of the purported class and

cannot adequately protect the interests of the purported class; and the purported class has not suffered class-wide injury.

PRAYER

WHEREFORE, Shell prays for judgment as follows:

1. That plaintiffs take nothing by their Complaint;

2. That the Complaint be dismissed with prejudice;

3. That Shell recover its attorney's fees and expenses incurred in this action; and

4. That the Court grant such other relief as is just and proper.

DATED: February 8, 2000

MUNGER, TOLLES & OLSON LLP

By: /s/
Stuart N. Senator

Attorneys for Defendant
SHELL OIL COMPANY

[Proof of service omitted in printing]

[Filed Feb. 8, 2000]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Case caption omitted in printing]

ANSWER OF TEXACO INC.
TO SECOND AMENDED COMPLAINT
FOR DAMAGES AND INJUNCTIVE RELIEF
UNDER THE ANTITRUST LAWS

Defendant Texaco Inc. ("Texaco"), for itself alone, answers Plaintiffs' "Second Amended Complaint for Damages and Injunctive Relief under the Antitrust Laws" ("Complaint") as follows:

1. Texaco admits that plaintiffs purport to bring this action on behalf of themselves and other entities and persons described in Paragraph 1 but denies they are entitled to bring such action and further denies the remainder of the allegations in Paragraph 1.

2. Texaco admits that plaintiffs purport to bring this action against the defendants named in Paragraph 2 and to demand a jury trial but denies they are entitled to bring such action. By Stipulation and Order dated December 21, 1999, Equilon Enterprises LLC, Motiva Enterprises LLC, Equiva Trading Company and Equiva Services LLC were dismissed from this lawsuit and are no longer defendants. Texaco denies the remainder of the allegations in Paragraph 2.

3. Texaco admits that the United States District Courts have subject matter jurisdiction over actions brought under the Sherman Act. Texaco denies the remainder of the allegations in Paragraph 3.

4. Texaco denies that the plaintiffs are entitled to maintain such action on behalf of persons similarly situated. Texaco lacks sufficient knowledge or information to admit or deny the remainder of the allegations in Paragraph 4 and on that basis denies such allegations.

5. Texaco lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 5 and on that basis denies such allegations.

6. Texaco denies the allegations in Paragraph 6.

7. Texaco denies the allegations in Paragraph 7.

8. Texaco denies the allegations in Paragraph 8.

9. Texaco denies the allegations in Paragraph 9.

10. Texaco lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 10 and on that basis denies such allegations.

11. Texaco lacks sufficient information to admit or deny the allegations in Paragraph 11 and on that basis denies such allegations.

12. Texaco denies the allegations in Paragraph 12.

13. Texaco lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 13 and on that basis denies such allegations.

14. Texaco lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 14 and on that basis denies such allegations.

15. Texaco lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 15 and on that basis denies such allegations.

16. Texaco admits that Saudi, Shell and Texaco have formed two joint ventures, reviewed by relevant government authorities, that engages in refining and marketing of gasoline and other petroleum products in portions of the United States and that some meetings took place in connection with the formation of those joint ventures. Texaco denies the remainder of the allegations in Paragraph 16.

17. Texaco admits that Saudi, Shell and Texaco no longer compete among themselves in the refining and marketing of branded gasoline and other petroleum products in portions of

the United States. Texaco denies the remainder of the allegations in Paragraph 17.

18. Texaco admits that Saudi, Shell and Texaco have formed a joint venture, reviewed by relevant government authorities, that engages in refining and marketing of branded gasoline and other petroleum products in portions of the United States. Texaco denies the remainder of the allegations in Paragraph 18.

19. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 19 requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 19.

20. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 20 requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 20.

21. Texaco denies the allegations of Paragraph 21.

22. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 22 requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 22.

23. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 23

requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 23.

24. Texaco lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 24 and on that basis denies such allegations.

25. Texaco lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 25 and on that basis denies such allegations.

26. Texaco lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 26 and on that basis denies such allegations.

27. Texaco admits that Saudi, Shell and Texaco have formed two joint ventures, reviewed by relevant government authorities, that engages in refining and marketing of branded gasoline and other petroleum products in portions of the United States and that some meetings took place in connection with the formation of those joint ventures. Texaco denies the remainder of the allegations in Paragraph 27.

28. Texaco admits that Saudi, Shell and Texaco have formed a joint venture, reviewed by relevant government authorities, that engages in refining and marketing of branded gasoline and other petroleum products in portions of the United States. Texaco admits that Saudi, Shell and Texaco no longer compete among themselves in the refining and marketing of branded gasoline and other petroleum products in portions of the United States. Texaco denies the remainder of the allegations in Paragraph 28.

29. Texaco admits that Saudi, Shell and Texaco have formed a joint venture, reviewed by relevant government authorities, that engages in refining and marketing of branded gasoline and other petroleum products in portions of the United States. Texaco denies the remainder of the allegations in Paragraph 29.

30. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 30 requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 30.

31. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 31 requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 31.

32. Texaco denies the allegations in Paragraph 32.

33. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 33 requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 33.

34. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 34 requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 34.

35. Texaco admits the allegations in Paragraph 35.

36. Texaco admits that during certain time periods it and/or its subsidiaries and affiliates have engaged in the business of exploring for and producing crude oil, and have refined, marketed, transported, and stored crude oil and petroleum products, including gasoline, in certain states. Texaco admits that upon the formation of the joint ventures with

Shell and Saudi, it exited the refining, distributing and marketing of branded gasoline in the United States. Texaco denies the remainder of the allegations in Paragraph 36.

37. Texaco admits that it and/or its subsidiaries and affiliates produce oil and natural gas and engage in manufacturing, transportation and marketing of oil and natural gas. Texaco denies the remainder of the allegations in Paragraph 37.

38. Texaco admits that Saudi, Shell and Texaco have formed two joint ventures, reviewed by relevant government authorities, that engages in refining and marketing of gasoline and other petroleum products in portions of the United States and that some meetings took place in connection with the formation of those joint ventures. Texaco denies the remainder of the allegations in Paragraph 38.

39. Texaco admits that Saudi, Shell and Texaco have formed a joint venture, reviewed by relevant government authorities, that engages in refining and marketing of gasoline and other petroleum products in portions of the United States. Texaco admits that Saudi, Shell and Texaco no longer compete among themselves in the refining and marketing of branded gasoline and other petroleum products in portions of the United States. Texaco denies the remainder of the allegations in 39.

40. Texaco denies the allegations of Paragraph 40.

41. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 41 requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 41.

42. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs'

Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 42 requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 42.

43. Texaco denies the allegations of Paragraph 43.

44. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 44 requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 44.

45. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 45 requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 45.

46. Texaco admits the allegations in Paragraph 46.

47. Texaco admits that Equilon is a joint venture formed by Shell and Texaco that refines and markets branded petroleum products in certain western and midwestern states, and that Shell and Texaco have 56 percent and 44 percent interests, respectively, in Equilon. Texaco denies the remainder of the allegations in Paragraph 47.

48. Texaco admits the allegations in Paragraph 48.

49. Texaco admits that Equilon refines or markets branded gasoline under the Shell and Texaco brand names in all or parts of 31 states and provides branded product to approximately 9000 Shell and Texaco branded retail outlets. Texaco denies the remainder of the allegations in Paragraph 49.

50. Texaco lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 50 and on that basis denies such allegations.

51. Texaco admits that Equilon's 1998 annual sales revenue was approximately $22 billion. Texaco denies the remainder of the allegations in Paragraph 51.

52. Texaco states that market share is not a constant number and may change on a continually basis. Texaco admits that as of October, 1999, Equilon was number one in market share in Arkansas, Oregon, Missouri, and Washington. Texaco admits that as of October, 1999, Equilon was number two in market share in Alaska, Arizona, Hawaii, Illinois, Indiana, Nebraska, Nevada, New Mexico, South Dakota and Wyoming. Texaco denies the remainder of the allegations in Paragraph 52.

53. Texaco admits that Equilon has five refineries that refine approximately 775,000 barrels per day. Texaco admits that Equilon operates approximately 55 proprietary terminals throughout the Mid-continent and Western states for crude oil and refined products. Texaco denies the remainder of the allegations in Paragraph 52.

54. Texaco admits that Equilon operates or owns an interest in approximately 30,000 miles of pipeline in 34 states. Texaco denies the remainder of the allegations in Paragraph 53.

55. Texaco denies the allegations in Paragraph 54.

56. Texaco admits the allegations in Paragraph 56.

57. Texaco admits that Motiva is a joint venture formed by Saudi, Shell and Texaco that refines and markets branded gasoline in certain eastern states, and that Shell, Texaco and Saudi have 35 percent, 32.5 percent and 32.5 percent interests, respectively, in Motiva. Texaco denies the remainder the allegations in Paragraph 57.

58. Texaco admits that Motiva began operations during July 1998 and has subsequently been in the business of

refining, transporting, storing and marketing petroleum products, including branded gasoline, in certain eastern states. Texaco denies the remainder of the allegations in Paragraph 58.

59. Texaco admits that Motiva refines or markets branded gasoline under the Shell and Texaco brand names in all or part of 26 states and Washington, D.C. and provides product to approximately 14,000 Shell branded and Texaco branded retail outlets. Texaco denies the remainder of the allegations in Paragraph 59.

60. Texaco lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 60 and on that basis denies such allegations.

61. Texaco admits that Motiva's 1998 sales revenue was approximately $5.4 billion. Texaco denies the remainder of the allegations in Paragraph 61.

62. Texaco states that market is not a constant number and may change on a continually basis. Texaco admits that as of October, 1999, Motiva was number one in market share in Alabama, Delaware, Florida, Louisiana, Maryland, Mississippi, North Carolina, Rhode Island, Tennessee, Texas and Virginia. Texaco denies the remainder of the allegations in Paragraph 62.

63. Texaco states that market is not a constant number and may change on a continually basis. Texaco admits that as of October, 1999, Motiva was number two in market share in Connecticut, Georgia, Massachusetts, new Hampshire, New Jersey and South Carolina. Texaco denies the remainder of the allegations in Paragraph 63.

64. Texaco admits that Motiva has four refineries that refine approximately 825,000 barrels per day. Texaco admits that Motiva operates approximately 49 proprietary terminals in the Northeast, Southeast and Gulf Coast states. Texaco denies the remainder of the allegations in Paragraph 64.

65. Texaco denies the allegations in Paragraph 65.

66. Texaco admits the allegations in Paragraph 66.

67. Texaco admits the allegations in Paragraph 67.

68. Texaco denies the allegations in Paragraph 68.

69. Texaco admits the allegations in Paragraph 69.

70. Texaco admits the allegations in Paragraph 70.

71. Texaco denies the allegations in Paragraph 71.

72. Texaco denies the allegations in Paragraph 72.

73. Texaco denies the allegations in Paragraph 73.

74. Texaco denies the allegations in Paragraph 74.

75. Texaco admits that, in or about March 1997, Shell and Texaco entered into a Memorandum of Understanding regarding the formation of a joint venture for refining and marketing of branded petroleum products in certain western and midwestern states, and that this joint venture was eventually named Equilon. Texaco denies the remainder of the allegations in Paragraph 75.

76. Texaco admits that, on or about July 16, 1997, Shell, Texaco and Saudi entered into a Memorandum of Understanding regarding the formation of a joint venture for refining and marketing of branded petroleum products in certain eastern states, and that this joint venture was ultimately named Motiva. Texaco denies the remainder of the allegations in Paragraph 76.

77. Texaco admits that it offered various rent programs to gasoline dealers selling its branded gasoline prior to the formation of Equilon. Texaco denies the remainder of the allegations in Paragraph 77.

78. Texaco denies the allegations in Paragraph 78.

79. Texaco denies the allegations in Paragraph 79.

80. Texaco denies the allegations in Paragraph 80.

81. Texaco denies the allegations in Paragraph 81.

82. Texaco admits that, after the formation of Equilon, Equilon unilaterally determines the prices at which it sells branded gasoline to independent Shell and Texaco branded dealers. Texaco denies the remainder of the allegations in Paragraph 82.

83. Texaco denies the allegations in Paragraph 83.

84. Texaco denies the allegations in Paragraph 84.

85. Texaco denies the allegations in Paragraph 85.

86. Texaco admits that, after the formation of Motiva, Motiva unilaterally determines the prices at which it sells branded gasoline to independent Shell and Texaco branded dealers. Texaco denies the remainder of the allegations in Paragraph 86.

87. Texaco denies the allegations in Paragraph 87.

88. Texaco denies the allegations in Paragraph 88.

89. Texaco denies the allegations in Paragraph 89.

90. Texaco denies the allegations in Paragraph 90.

91. Texaco denies the allegations in Paragraph 91.

92. Texaco denies the allegations in Paragraph 92.

93. Texaco denies the allegations in Paragraph 93.

94. Texaco admits that Shell and Texaco competed in certain markets before the formation of Equilon and Motiva. Shell and Texaco still compete in certain markets but no longer compete in their downstream operations, which include the refining, distribution and marketing of branded gasoline. Texaco denies the remainder of the allegations in Paragraph 94.

95. Texaco denies the allegations in Paragraph 95.

96. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 96

requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 96.

97. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 97 requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 97.

98. Texaco states that by Stipulation and Order dated December 21, 1999, Equilon Enterprises LLC, Motiva Enterprises LLC, Equiva Trading Company and Equiva Services LLC were dismissed from this lawsuit and are no longer defendants. Texaco submits that no response is required to Paragraph 98. To the extent that a response is required, Texaco denies the allegations in Paragraph 98.

99. Texaco states that by Stipulation and Order dated December 21, 1999, Equilon Enterprises LLC, Motiva Enterprises LLC, Equiva Trading Company and Equiva Services LLC were dismissed from this lawsuit and are no longer defendants. Texaco submits that no response is required to Paragraph 99. To the extent that a response is required, Texaco denies the allegations in Paragraph 99.

100. Texaco states that by Stipulation and Order dated December 21, 1999, Equilon Enterprises LLC, Motiva Enterprises LLC, Equiva Trading Company and Equiva Services LLC were dismissed from this lawsuit and are no longer defendants. Texaco submits that no response is required to Paragraph 100. To the extent that a response is required, Texaco denies the allegations in Paragraph 100.

101. Texaco denies the allegations in Paragraph 101.

102. Texaco denies the allegations in Paragraph 102.

103. Texaco denies the allegations in Paragraph 103.

104. Texaco denies the allegations of Paragraph 104.

105. Texaco denies the allegations of Paragraph 105.

106. Texaco admits that Shell and Texaco competed in certain markets before the formation of Equilon and Motiva. Shell and Texaco still compete in certain markets but no longer compete in their downstream operations, which include the refining, distribution and marketing of branded gasoline. Texaco denies the remainder of the allegations in Paragraph 106.

107. Texaco denies the allegations of Paragraph 107.

108. Texaco denies the allegations of Paragraph 108.

109. Texaco denies the allegations of Paragraph 109.

110. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 110 requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 110.

111. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 111 requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 111.

112. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and customers. Therefore, Texaco submits that Paragraph 112 requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 112.

113. Texaco states that because the Plaintiffs have failed to amend their division of markets and customers allegations, the Court's January 10, 2000 Order dismissed Plaintiffs' Section 1 claims based upon alleged division of markets and

customers. Therefore, Texaco submits that Paragraph 113 requires no response. To the extent any response is required, Texaco denies the allegations in Paragraph 113.

114. Texaco denies the allegations of Paragraph 114.

FIRST AFFIRMATIVE DEFENSE

115. The Complaint and each purported claim therein fails to state facts sufficient to constitute a claim against Texaco upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

116. Texaco has at all times and in all relevant manners acted reasonably as necessary to serve legitimate business purposes, in furtherance of trade, in good faith, and with the purpose and effect of promoting, encouraging, or increasing competition. Texaco has not acted with the purpose or intent to suppress or restrain competition.

THIRD AFFIRMATIVE DEFENSE

117. Relevant government authorities reviewed the joint ventures that are the subject of the Complaint for any purported restraint on competition. The Federal Trade Commission entered into stipulated judgments with defendants herein in this regard. The instant Complaint is barred and/or preempted by the actions of the Federal Trade Commission with respect to the joint ventures.

FOURTH AFFIRMATIVE DEFENSE

118. The Complaint and each purported claim therein is barred by the doctrines of waiver, estoppel and laches in that plaintiffs have unreasonably and, on information and belief, intentionally, delayed to defendants' detriment in challenging the joint ventures that they now ask the Court to dissolve.

FIFTH AFFIRMATIVE DEFENSE

119. Due to the unity of interest between and among the defendants, pursuant to the *Copperweld* doctrine, Texaco is

immune from claims that the actions alleged herein violate the Sherman Act.

SIXTH AFFIRMATIVE DEFENSE

120. Plaintiffs have no standing or capacity, individually or on behalf of the purported class, to maintain this action against Texaco.

SEVENTH AFFIRMATIVE DEFENSE

121. Plaintiffs' Complaint is not a proper class action for a variety of reason, including but not limited to the following: the purported class is not certifiable as such; Plaintiffs are not adequate representatives of the purported class and cannot adequately protect the interests of the purported class; that individual issues predominate over common ones; and the purported class has not suffered class-wide injury.

PRAYER

WHEREFORE, Texaco prays for judgment as follows:

1. That plaintiffs take nothing by their Complaint;

2. That the Complaint be dismissed with prejudice;

3. That Texaco recover its attorney's fees and expenses incurred in this action and

4. That the Court grant such other relief as is just and proper.

Respectfully submitted,

/s/

Thomas J. Nolan
Dale J. Giali
HOWREY SIMON
ARNOLD & WHITE, LLP

* * *

Attorneys for Texaco Inc.

Dated: February 8, 2000

[Proof of service omitted in printing]

[Filed Feb. 8, 2000]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Case caption omitted in printing]

ANSWER OF SAUDI REFINING, INC.
TO SECOND AMENDED COMPLAINT

Defendant SAUDI REFINING, INC. ("SRI"), for itself alone, answers plaintiffs' Second Amended Complaint (the "Complaint"), as follows:

1. SRI admits that plaintiffs purport to bring this action on behalf of themselves and other entities and persons described in paragraph 1. Except as expressly admitted, SRI lacks knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraph 1 and on that basis denies such averments.

2. SRI admits that plaintiffs purport to bring this action against the defendants named in paragraph 2 and to demand a jury. Except as expressly admitted, SRI lacks knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraph 2 and on that basis denies such averments.

3. SRI admits that United States District Courts have subject matter jurisdiction over Sherman Act claims. Except as expressly admitted, SRI lacks knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraph 3 and on that basis denies such averments.

4. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 4 and on that basis denies such averments.

5. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 5 and on that basis denies such averments.

6. SRI denies the averments contained in paragraph 6.

7. SRI denies the averments contained in paragraph 7.

8. SRI denies the averments contained in paragraph 8.

9. SRI denies the averments contained in paragraph 9.

10. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 10 and on that basis denies such averments.

11. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 11 and on that basis denies such averments.

12. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 12 and on that basis denies such averments.

13. SRI admits that it is a corporation with its headquarters and principal place of business in Houston, Texas, that it is a corporate affiliate of Saudi Aramco and that Saudi Aramco is owned by the Kingdom of Saudi Arabia, and that Saudi Arabia is a principal member of OPEC. Except as expressly admitted, SRI denies the remaining averments contained in paragraph 13.

14. SRI admits that it has been indirectly engaged in the transporting of crude oil. SRI admits that it owns an interest in Motiva Enterprises LLC ("Motiva") and that Motiva is engaged in refining, transporting, storing and marketing petroleum products, including gasoline, in some areas of the United States. Except as expressly admitted, SRI denies the remaining averments contained in paragraph 14.

15. SRI denies the averments contained in paragraph 15.

16. SRI denies the averments contained in paragraph 16.

17. SRI denies the averments contained in paragraph 17.

18. SRI denies the averments contained in paragraph 18.

19. SRI denies the averments contained in paragraph 19.

20. SRI denies the averments contained in paragraph 20.

21. SRI denies the averments contained in paragraph 21.

22. SRI denies the averments contained in paragraph 22.

23. SRI denies the averments contained in paragraph 23.

24. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 24 and on that basis denies such averments.

25. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 25 and on that basis denies such averments.

26. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 26 and on that basis denies such averments.

27. SRI denies the averments contained in paragraph 27.

28. SRI lacks sufficient information to admit or deny the averments of paragraph 28 concerning any knowledge or understanding of the Chairman of Shell and on that basis denies such averments. Except as expressly admitted or denied for lack of sufficient information, SRI denies the remaining averments of paragraph 28.

29. SRI lacks sufficient information to admit or deny the averments of paragraph 29 concerning any knowledge or understanding of the Chairman of Shell and on that basis denies such averments. Except as expressly admitted or denied for lack of sufficient information, SRI denies the remaining averments of paragraph 29.

30. SRI lacks sufficient information to admit or deny the averments of paragraph 30 concerning any knowledge or understanding of the Chairman of Shell and on that basis denies such averments. Except as expressly admitted or denied for lack of sufficient information, SRI denies the remaining averments of paragraph 30.

31. SRI lacks sufficient information to admit or deny the averments of paragraph 31 concerning any knowledge or understanding of the Chairman of Shell and on that basis

denies such averments. Except as expressly admitted or denied for lack of sufficient information, SRI denies the remaining averments of paragraph 31.

32. SRI denies the averments contained in paragraph 32.

33. SRI denies the averments contained in paragraph 33.

34. SRI denies the averments contained in paragraph 34.

35. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 35 and on that basis denies such averments.

36. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 36 and on that basis denies such averments.

37. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 37 and on that basis denies such averments.

38. SRI denies the averments contained in paragraph 38.

39. SRI lacks sufficient information to admit or deny the averments of paragraph 39 concerning any knowledge or understanding of the Chairman of Texaco and on that basis denies such averments. Except as expressly admitted or denied for lack of sufficient information, SRI denies the remaining averments of paragraph 39.

40. SRI lacks sufficient information to admit or deny the averments of paragraph 40 concerning any knowledge or understanding of the Chairman of Texaco and on that basis denies such averments. Except as expressly admitted or denied for lack of sufficient information, SRI denies the remaining averments of paragraph 40.

41. SRI lacks sufficient information to admit or deny the averments of paragraph 41 concerning any knowledge or understanding of the Chairman of Texaco and on that basis denies such averments. Except as expressly admitted or denied for lack of sufficient information, SRI denies the remaining averments of paragraph 41.

42. SRI lacks sufficient information to admit or deny the averments of paragraph 42 concerning any knowledge or understanding of the Chairman of Texaco and on that basis denies such averments. Except as expressly admitted or denied for lack of sufficient information, SRI denies the remaining averments of paragraph 42.

43. SRI denies the averments contained in paragraph 43.

44. SRI denies the averments contained in paragraph 44.

45. SRI denies the averments contained in paragraph 45.

46. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 46 and on that basis denies such averments.

47. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 47 and on that basis denies such averments.

48. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 48 and on that basis denies such averments.

49. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 49 and on that basis denies such averments.

50. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 50 and on that basis denies such averments.

51. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 51 and on that basis denies such averments.

52. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 52 and on that basis denies such averments.

53. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 53 and on that basis denies such averments.

54. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 54 and on that basis denies such averments.

55. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 55 and on that basis denies such averments.

56. SRI admits the averments contained in paragraph 56.

57. SRI admits that Motiva is a Limited Liability Company formed by SRI, Shell, an affiliate of Shell and an affiliate of Texaco. SRI further admits that Motiva refines, transports, stores and markets petroleum products, including gasoline, in certain Gulf Coast and Eastern regions of the United States. SRI admits that it has a 32.5 percent interest in Motiva. Except as expressly admitted, SRI denies the remaining averments of paragraph 57.

58. SRI admits that Motiva began operations during July 1998 and has subsequently been in the business of refining, transporting, storing and marketing petroleum products, including gasoline, in certain Gulf Coast and Eastern regions of the United States. Except as expressly admitted, SRI denies the remaining averments of paragraph 58.

59. SRI admits that Motiva refines crude oil and markets gasoline to Shell and Texaco branded retail outlets in 26 states and the District of Columbia. Except as expressly admitted, SRI denies the remaining averments of paragraph 59.

60. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 60 and on that basis denies such averments.

61. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 61 and on that basis denies such averments.

62. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 62 and on that basis denies such averments.

63. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 63 and on that basis denies such averments.

64. SRI admits that Motiva owns an interest in four refineries. SRI lacks knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraph 64 and on that basis denies such averments.

65. SRI denies the averments contained in paragraph 65.

66. SRI admits the averments contained in paragraph 66.

67. SRI admits the averments contained in paragraph 67.

68. SRI denies the averments contained in paragraph 68.

69. SRI admits the averments contained in paragraph 69.

70. SRI admits the averments contained in paragraph 70.

71. SRI denies the averments contained in paragraph 71.

72. SRI denies the averments contained in paragraph 72.

73. SRI denies the averments contained in paragraph 73.

74. SRI denies the averments contained in paragraph 74.

75. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 75 and on that basis denies such averments.

76. SRI admits that, on or about July 16, 1997, Shell, Texaco and SRI entered into a Memorandum of Understanding regarding the formation of a joint venture for refining and marketing of petroleum products in certain Gulf Coast and Eastern regions of the United States, and that this joint venture was ultimately named Motiva. Except as expressly admitted, SRI denies the remaining averments of paragraph 76.

77. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 77 and on that basis denies such averments.

78. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 78 and on that basis denies such averments.

79. SRI denies the averments contained in paragraph 79.

80. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 80 and on that basis denies such averments.

81. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 81 and on that basis denies such averments.

82. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 82 and on that basis denies such averments.

83. SRI denies the averments contained in paragraph 83.

84. SRI denies the averments contained in paragraph 84.

85. SRI denies the averments contained in paragraph 85.

86. SRI admits that Motiva determines the prices at which it sells gasoline to others. Except as expressly admitted, SRI denies the remaining averments of paragraph 86.

87. SRI admits that some exploration, production, transportation, storage, refining, distribution, marketing and selling of crude oil and gasoline is carried on in and affects interstate and foreign commerce. Except as expressly admitted, SRI denies the remaining averments of paragraph 87.

88. SRI denies the averments contained in paragraph 88.

89. SRI denies the averments contained in paragraph 89.

90. SRI denies the averments contained in paragraph 90.

91. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 91 and on that basis denies such averments.

92. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 92 and on that basis denies such averments.

93. SRI denies the averments contained in paragraph 93.

94. SRI admits that SRI, Shell and Texaco competed in certain market(s) before the formation of Equilon and Motiva. Except as expressly admitted, SRI denies the remaining averments of paragraph 94.

95. SRI denies the averments contained in paragraph 95.

96. SRI denies the averments contained in paragraph 96.

97. SRI denies the averments contained in paragraph 97.

98. SRI denies the averments contained in paragraph 98.

99. SRI denies the averments contained in paragraph 99.

100. SRI denies the averments contained in paragraph 100.

101. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 101 and on that basis denies such averments.

102. SRI denies the averments contained in paragraph 102.

103. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 103 and on that basis denies such averments.

104. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 104 and on that basis denies such averments.

105. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 105 and on that basis denies such averments.

106. SRI lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 106 and on that basis denies such averments.

107. SRI denies the averments contained in paragraph 107.

108. SRI denies the averments contained in paragraph 108.

109. SRI denies the averments contained in paragraph 109.

110. SRI denies the averments contained in paragraph 110.

111. SRI denies the averments contained in paragraph 111.

112. SRI denies the averments contained in paragraph 112.

113. SRI denies the averments contained in paragraph 113.

114. SRI denies the averments contained in paragraph 114.

AFFIRMATIVE DEFENSES

As and for its separate and affirmative defenses, SRI alleges as follows:

FIRST AFFIRMATIVE DEFENSE

115. The Complaint, and each claim alleged therein, fails to state facts sufficient to constitute a claim against SRI upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

116. SRI has at all times and in all relevant manners acted ~~reasonably~~, as necessary to serve legitimate business purposes, in furtherance of trade, in good faith, and with the purpose and effect of promoting, encouraging, and/or increasing competition. SRI has not acted with the purpose or intent to suppress or restrain competition.

THIRD AFFIRMATIVE DEFENSE

117. Relevant government authorities reviewed the joint ventures that are the subject of the Complaint for any purported restraint on competition. The Federal Trade Commission entered into stipulated judgments with defendants herein in this regard. The instant Complaint is barred and/or preempted by the actions of the Federal Trade Commission with respect to the joint ventures.

FOURTH AFFIRMATIVE DEFENSE

118. The Complaint, and each claim alleged therein, is barred by the doctrines of waiver, estoppel and laches in that plaintiffs have unreasonably and, on information and belief, intentionally, delayed to defendants' detriment in

challenging the joint ventures they now ask the Court to dissolve.

FIFTH AFFIRMATIVE DEFENSE

119. Due to the unity of interest between and among the defendants, pursuant to the *Copperweld* doctrine, SRI is immune from claims that the actions alleged herein violate the Sherman Act.

SIXTH AFFIRMATIVE DEFENSE

120. Plaintiffs' claims and those of the purported class, and any recovery based thereon, are barred in whole or in part by plaintiffs' and the purported class members' failure to exercise due care to avoid, mitigate, or protect themselves from any damages that they allegedly sustained.

SEVENTH AFFIRMATIVE DEFENSE

121. Plaintiffs have no standing or capacity, individually or on behalf of the purported class, to maintain this action against SRI.

EIGHTH AFFIRMATIVE DEFENSE

122. Plaintiffs' Complaint is not a proper class action for a variety of reasons, including but not limited to the following: the purported class is not certifiable as such; plaintiffs are not adequate representatives of the purported class and cannot adequately protect the interests of the purported class and the purported class has not suffered class-wide injury.

PRAYER

WHEREFORE, SRI prays for judgment as follows:

1. That plaintiffs take nothing by their Complaint;

2. That the Complaint be dismissed with prejudice;

3. That SRI recover its attorney's fees and expenses incurred in this action; and

4. That the Court grant such other relief as it deems just and proper.

DATED: February 7, 2000 WHITE & CASE LLP

By: /s/

Bryan A. Merryman
Attorneys for Defendant
SAUDI REFINING, INC.

[Proof of service omitted in printing]

[Filed Oct. 5, 2001]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Case caption omitted in printing.]

JOINT STIPULATION OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW, INCLUDING PROPOSED ORDERS

[RESUBMITTED PURSUANT TO ORDER OF SEPTEMBER 13, 2001]

FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER ENTERED MARCH 23, 2000

[Listing of counsel omitted in printing.]

Pursuant to Local Rule 7.14.1 of the Central District of California, the parties submit this Statement of Uncontroverted Facts in support of their respective motions for summary judgment.[1] This joint stipulation contains the following sections: statement of facts agreed by all parties to be undisputed; plaintiffs' statement of additional facts believed by plaintiffs to be undisputed and responses by defendants; and defendants' statement of additional facts believed by defendants to be undisputed and responses by plaintiffs. The parties submit and have previously submitted declarations and supporting documentation in support of factual propositions as to which there is no stipulation. *See* Court's Order of September 13, 2001.

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[1] In light of the Court's order that the parties submit a joint motion for summary judgment, the parties do not submit separate Statements of Genuine Issues pursuant to L.R. 7.14.2. Instead, the parties submit, along with a Statement of Uncontroverted Facts, separate sections containing facts believed to be uncontroverted by the parties, with responses by opposing parties. The parties do not concede that the facts stated by opposing parties in these separate sections are actually material or undisputed.

STATEMENT OF UNCONTROVERTED FACTS AGREED TO BY ALL PARTIES

1. Defendant Saudi Refining Inc. ("SRI") is a corporation with its headquarters and principal place of business in Houston, Texas. SRI is a corporate affiliate of Saudi Arabian Oil Co. ("Saudi Aramco").

2. Defendant Shell Oil Company ("Shell") is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its headquarters and principal place of business at One Shell Plaza, Houston, Texas. Shell is a subsidiary of the Royal Dutch/Shell Group, which is comprised of Royal Dutch Petroleum Company (domiciled in the Netherlands) and the Shell Transport and Trading Company (domiciled in the United Kingdom). Shell and/or some of its subsidiaries and affiliates are engaged in the business of exploring for and producing crude oil, and have refined, marketed, transported, and stored crude oil and petroleum products, including gasoline, in certain states of the United States.

3. Defendant Texaco Inc., ("Texaco") is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its headquarters and principal place of business at 2000 Westchester Avenue, White Plains, New York. Texaco and/or some of its subsidiaries and affiliates have engaged in the business of exploring for and producing crude oil, and have refined, marketed, transported, and stored crude oil and petroleum products, including gasoline, in certain states of the United States.

4. During the period from 1989 to 1998, SRI and Texaco did business in certain parts of the Eastern United States through a joint venture entitled Star Enterprise. Star Enterprise engaged in the refining and marketing of gasoline under the Texaco brand. Star Enterprise was formed when SRI purchased certain refining and marketing assets from Texaco and then contributed those assets to Star Enterprise in connection with its formation.

5. Plaintiffs are residents of the Central District of California who operate or previously operated Shell or Texaco branded gasoline stations in California. Prior to the formation of the joint ventures, plaintiffs purchased branded gasoline from Shell or Texaco.

6. Equilon Enterprises LLC ("Equilon") is a Delaware limited liability company that was formed as of January 1, 1998. A general overview of the principal Equilon agreements is contained in PX 330 (at 8-57) and a list of the agreements is contained in PX 1 (at pp. iii and iv).

7. Motiva Enterprises LLC ("Motiva") is a Delaware limited liability company that was formed as of July 1, 1998. A general overview of the principal Motiva agreements is contained in PX 330 (at 8-57) and a list of the agreements is contained in PX 5 (at pp. iii and iv).

8. Subsequent to the formation of Equilon, plaintiffs purchased branded gasoline from Equilon.

9. Plaintiffs have never purchased gasoline from SRI, Star or Motiva.

10. Equilon and Motiva refine gasoline and sell it directly to independent Texaco and Shell service station operators who either own the service station they operate or lease the service station from Equilon or Motiva or through independent distributors. Some branded service stations are owned directly by Equilon and Motiva.

11. Plaintiffs purport to bring this action on behalf of a nationwide class of operators of Shell and Texaco gasoline stations.

12. Major oil companies such as Shell and Texaco speak of "upstream" and "downstream" operations. Crude oil is the raw product from which gasoline is made at a refinery. Upstream operations consist of exploring for and producing crude oil, and downstream operations consist of refining crude into gasoline and other products and marketing the finished products.

13. Gasoline is sold in the United States at the retail level at which it is sold to the ultimate consumer, and the wholesale level at which it is sold to a retailer or reseller.

14. Prior to the formation of Equilon and Motiva, Texaco and Shell independently produced gasoline from their United States refineries and independently sold it directly to service station operators or to distributors.

15. Prior to the formation of Equilon and Motiva, Shell, Texaco and Star sold and marketed gasoline at both the wholesale and retail levels: The wholesale level consisted of selling branded gasoline in bulk to retailers and resellers, and the retail level consisted of selling branded gasoline to consumers from company-operated service stations.

16. The Dealer Tankwagon Price ("DTW") is the gasoline price Equilon charges independent service station operators that purchase gasoline directly from Equilon.

17. The Dealer Tankwagon Price ("DTW") is the gasoline price Motiva charges independent service station operators that purchase gasoline directly from Motiva.

18. The DTW prices for the Equilon territory are set by Equilon.

19. Equilon sets DTW prices for thousands of different market areas.

20. The DTW prices for the Motiva territory are set by Motiva.

21. Motiva sets DTW prices for thousands of different market areas.

22. The wholesale (or rack) price is the gasoline price charged for large volume deliveries at the refineries.

23. The retail price of gasoline is the price independent service station operators charge the consumer at the pump.

24. The retail price of gasoline is set by each individual service station operator.

25. Prior to the formation of Equilon and Motiva, Texaco and Shell independently and separately maintained and operated the refining and marketing of their gasoline.

26. Prior to the formation of Equilon and Motiva, Texaco set Texaco's DTW and wholesale prices within Texaco's refining and marketing organization.

27. Prior to the formation of Equilon and Motiva, Shell set Shell's DTW and wholesale prices within Shell's refining and marketing organization.

28. In Texaco, the wholesale and DTW price for its gasoline for the Western United States was determined within a business unit named Texaco Refining and Marketing ("TRMI").

29. The wholesale and DTW price of Texaco gasoline for the Eastern United States was determined by Star.

30. In Shell, the wholesale and DTW price for its gasoline was determined within the marketing department.

31. Shell, Texaco, and SRI each considered the refining and marketing businesses to be intensely competitive and expected this intense competition to continue.

32. Texaco and Shell and SRI regarded worldwide excess capacity as a contributing factor in the depressed economic conditions in the industry.

33. Shell initially approached Texaco in March of 1996. The scope of these discussions grew until they eventually included discussions regarding the consolidation of Shell's and Texaco's downstream assets in the United States.

34. Star eventually joined the discussions with Shell.

35. From the time Texaco, Shell and Star began their discussions, they believed that the oil industry was about to enter a period of consolidation. They were aware that BP and Mobil had combined in Europe, and thought that other oil companies were likely to be entering into similar combinations in the United States.

36. The parties established a synergy team and steering committee comprised of employees from Texaco, Shell and Star to explore whether consolidation could be accomplished.

37. The synergy team exchanged among themselves information concerning historical refining and marketing margins.

38. The synergy team also exchanged revenue and profitability forecasts using agreed-upon margin assumptions.

39. In June of 1996, the synergy team determined and reported that the combination of their downstream operations had the potential for cost reductions of approximately $800 million annually, $250 million attributable to Motiva and $550 million attributable to Equilon.

40. Encouraged by the report of the synergy team, the defendants formed negotiating teams to formulate the terms of the combination, including the value of the assets to be contributed by each defendant.

41. During the negotiation of Equilon and Motiva, Texaco and Shell negotiated a standstill agreement, under which Shell agreed that it would not initiate a takeover of Texaco during the negotiations and for a specified period thereafter.

42. The formation of Equilon ended competition between Shell and Texaco in the Western United States with respect to the downstream refining and marketing of gasoline.

43. The ownership and gains or losses of Equilon are allocated in proportion to the assets contributed to Equilon by each of the parent corporations. Shell owns 56% and Texaco owns 44% of Equilon.

44. Texaco and SRI had previously formed Star, which included the downstream gasoline refining and marketing assets of both Texaco and SRI. Star was terminated and unwound and the Star assets and liabilities were placed into Motiva.

45. The formation of Motiva ended competition between Shell and Star in the Eastern United States with respect to the downstream refining and marketing of gasoline.

46. Under the terms of the Motiva formation agreements, Texaco, Shell and SRI agreed to share the risks and losses associated with Motiva.

47. The ownership and gains or losses of Motiva are allocated in proportion to the assets contributed to Motiva by each of the parent corporations. Shell owns 35%, and Texaco and SRI each own 32.5% of Motiva.

48. The downstream assets included in Equilon and Motiva included 12 refineries located in California, Delaware, Illinois, Kansas, Louisiana, Texas and Washington, 23 lubricant blending plants, 2 research laboratories, 22,000 branded service stations, over 24,000 miles of pipeline, 107 terminals, and approximately 24,000 employees.

49. Shell and Texaco did not include their marine fuels businesses in Equilon and Motiva.

50. Shell and Texaco did not include their upstream operations, such as exploration and production, in Equilon and Motiva.

51. In their agreements, the parties provided for dissolution of Equilon and Motiva by mutual consent at any time, and unilaterally by notice after five years, effective two years after notice.

52. Ownership of the Texaco and Shell trademarks was not transferred to Equilon and Motiva.

53. Equilon and Motiva market gasoline under the Shell and Texaco brand names in the Western and Eastern United States, respectively, pursuant to written license agreements with Shell and Texaco.

54. Equilon and Motiva licensed the Shell and Texaco trademarks subject to Brand Management Protocol agreements.

55. The Brand Management Protocols generally required that both the Shell brand and the Texaco brand would be preserved, that both would be treated equally and that neither brand would receive preferential treatment over the other brand.

56. After the formation of Equilon and Motiva, use and management of the Shell and Texaco brands by Equilon and Motiva were subject to the oversight of a Brand Management Council, which included representatives of Shell and Texaco. One of the functions of the Brand Management Council was to develop criteria and standards by which to measure brand performance, so as to ensure that both Shell and Texaco brands were receiving equal treatment.

57. Motiva and Equilon each have a Chief Executive Officer ("CEO").

58. Texaco and Shell agreed not to compete with Equilon and agreed not to engage in the manufacturing and marketing of certain products in the Equilon geographic area, including fuel, synthetic gasoline and electricity.

59. Texaco, Shell and SRI agreed not to compete with Motiva and agreed not to engage in the manufacturing and marketing of certain products in the Motiva geographic area, including fuel, synthetic gasoline and electricity.

60. Under the Motiva agreements, SRI retained the option of entering refining and marketing in the Western United States.

61. Since their formation, Equilon and Motiva have maintained and marketed both the Shell and Texaco brands of gasoline.

62. Prior to the formation of Equilon and Motiva, Shell, Texaco and Star separately and independently set prices for the Shell and Texaco brands through their own pricing departments. After the formation of Equilon and Motiva, the pricing was consolidated so that one person at Equilon set prices for both the Shell and Texaco brands in any given

Equilon pricing area, and one person at Motiva set prices for both brands in any given Motiva pricing area.

63. Equilon and Motiva each set prices for Shell and Texaco branded gasolines in thousands of distinct geographic trade areas throughout their respective regions of operation. Prices in each trade area are set based on conditions in that particular trade area.

64. The independent dealer operators in the Equilon and Motiva geographic areas determine, on their own, the prices to charge consumers for branded gasoline at the pump.

65. Texaco and Shell branded service station operators continue to compete for customers at the pump.

66. To some extent, the customers for the Shell and Texaco brands are different, and the marketing of the two brands is targeted at different customer segments. For example, Texaco customers tend to be more blue-collar and rural than Shell customers, who are more affluent and urban.

67. After their formation, Equilon and Motiva also eliminated the variable rent program under which Shell dealers received discounts in the form of rebates applied against station rents depending on their gasoline purchases. Previously, Shell dealers that had met specified targets for gasoline purchases received rebates against their rent, depending on the amount of gasoline purchased.

PLAINTIFFS' STATEMENT OF ADDITIONAL FACTS BELIEVED BY PLAINTIFFS TO BE UNDISPUTED AND RESPONSES BY DEFENDANTS

A. PARTIES

1. Defendant SRI is a corporate affiliate of Saudi Arabian Oil Co. ("Saudi Aramco"), which is owned by the Kingdom of Saudi Arabia. Saudi Arabia is a principal member of OPEC. SRI has been indirectly engaged in the transporting of crude oil. SRI owns an interest in Motiva Enterprises LLC ("Motiva"), which is engaged in refining, transporting, storing and marketing petroleum products, including

gasoline, in some areas of the United States. (Answer of SRI to Second Amended Complaint ("SRI Answer"), ¶¶ 13, 14.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. Defendants agree to, and SRI's answer admits the first clause of the first sentence, as well as the second and third sentences. Defendants maintain that only SRI is a defendant to this action, and therefore any and all references to the Kingdom of Saudi Arabia and to OPEC are not relevant and not material.

B. TRANSACTIONS AT ISSUE

2. Effective January 1, 1998, following negotiations among the defendants that began in March of 1996, defendants Shell and Texaco formed Equilon, a combination of the Shell and Texaco refining and marketing ("downstream") operations in the Western United States. As a result of the Equilon combination, defendants eliminated competition with each other in the refining and marketing of branded gasoline in the Western United States. The combination continued to sell both the Shell and Texaco brands of gasoline, but eliminated price competition between the brands. (Declaration of Daniel R. Shulman ("Shulman Decl."), submitted herewith, Tab 2, containing Plaintiff Exhibit ("PX") 1; PX 2; PX 3; PX 4; Deposition of John Darnley ("Darnley Depo.), pp. 15-16; Deposition of Glenn Tilton ("Tilton Depo."), p. 118; Deposition of Mark Williams ("Williams Depo."), pp. 30-31; PX 274.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. Defendants dispute that the formation of the joint ventures eliminated price competition between the brands. Plaintiffs have stipulated and have testified in depositions that Texaco and Shell branded service station operators continue to compete for customers at the pump. (Uncontroverted Fact No. 65).

3. Effective July 1, 1998, as the culmination of their negotiations , defendants formed Motiva, a combination of their downstream businesses in the Eastern United States. As a result of the Motiva combination, defendants eliminated competition with each other in the refining and marketing of branded gasoline in the Eastern United States. The combination continued to sell both the Shell and Texaco brands of gasoline, but eliminated price competition between the brands. (Shulman Decl., Tab 3, containing PX 5, PX 6; PX 7; PX 8; PX 9; Deposition of Larry Burch ("Burch Depo."), p. 31; Tilton Depo., p. 118; PX 275.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. Defendants dispute that the formation of the joint ventures eliminated price competition between the brands. Plaintiffs have stipulated that Texaco and Shell branded service station operators continue to compete for customers at the pump. (Uncontroverted Fact No. 65).

4. Defendants have generally referred to the overall combination of Equilon, Motiva, and related service companies as "The Alliance." (Shulman Decl., Tab 4, containing Deposition of John Boles ("Boles Depo."), p. 97; Deposition of L. Wilson Berry ("Berry Depo."), pp. 5, 18, 34, 40; Burch Depo., p. 7; Tilton Depo., pp. 17, 170-71.)

Response by Defendants: Defendants admit that three Texaco representatives and one Shell representative testified that they have referred to the joint ventures as an alliance. Defendants, however, maintain that the expression "The Alliance" is not material nor relevant. Plaintiffs insist on using that expression instead of joint ventures.

C. PREALLIANCE INDUSTRY CONDITIONS

5. Prior to The Alliance, competitors in the United States gasoline refining and marketing industry included, *inter alia*, six major oil companies (Shell, Texaco, Exxon, Mobil, Chevron, and Amoco), each of which had a fairly stable market share in the range of six to eight percent. Shell, with

a market share of 8 percent, had annual revenues of $18.3 billion; Texaco, with a share of 7 percent, had annual revenues of $18 billion. (Shulman Decl., Tab 5, containing PX 25 at p. 18428, PX 50 at p. 21615, PX 88 at pp. 763, 765-66; PX 34 at p. 734.)

Response by Defendants: Defendants maintain that the facts contained above are not material or relevant because the plaintiffs have not alleged a claim subject to a rule of reason analysis. Moreover, plaintiffs do not define what the expression "fairly stable" means. Nor do they indicate, and they cannot indicate, that these market shares support market power by any of the named oil companies. Defendants further object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

6. Despite defendants' dissatisfaction with their rates of return, their refining and marketing businesses were profitable prior to the formation of The Alliance. (Shulman Decl., Tab 6, containing Deposition of John Barnes ("Barnes Depo."), pp. 134-35; Williams Depo., pp. 118-19.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. Defendants admit that one Shell representative and one SRI representative testified that prior to the formation of the joint ventures, Shell and Star were earning insufficient returns on investment. Defendants also have admitted that refining and marketing margins were not satisfactory. Plaintiffs provide no support for the representation that Texaco, Shell and SRI were "profitable" prior to formation or in what manner they were profitable. Defendants further object to this fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

7. Even in the absence of The Alliance, the defendants planned to implement cost reductions in order to improve competitiveness and profitability in their downstream

businesses. (Shulman Decl., Tab 7, containing Barnes Depo., pp. 36-37; PX 18; Deposition of Frank Woelfel ("Woelfel Depo."), pp. 23, 50-51.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. Defendants admit that two SRI representatives testified unremarkably that prior to the formation of the joint ventures, Star had plans to reduce costs and improve efficiencies. Other deponents have testified that businesses always look to improve costs, but did not testify as plaintiffs attempt to argue that specific cost reductions were planned. Defendants further object to this fact given plaintiffs' insistence on using the non-material expression "The Alliance" instead of joint ventures.

8. The defendants believed, however, that in the absence of a combination such as The Alliance, any cost savings the defendants achieved independently would not result in a sustainable increase in profitability, and would be competed away. (Shulman Decl., Tab 8, containing PX 90; Deposition of Jim Derryberry ("Derryberry Depo."), pp. 40-41; Williams Depo., pp. 55-56; PX 58 at p. 2406; Barnes Depo., pp. 37-38.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. Defendants admit that a non-defendant JP Morgan representative opined that Star's annual cost savings initiatives might not result in sustainable competitive advantages. Defendants further admit that one SRI representative testified that even if Star reduced its own costs, it could not, by itself, attain a position of leadership. Mr. Williams, a Shell representative, testified that continued investment in refineries in the early 1990s produced extremely low returns. Plaintiffs provide no additional support in the form of testimony from a Texaco representative. Plaintiffs' own expert testified that the synergies were over and above what could have been

achieved independently by the parties. Defendants further object to this fact given plaintiffs' insistence on using the non-material expression "The Alliance" instead of joint ventures.

D. THE NEGOTIATIONS LEADING TO THE ALLIANCE

9. For a number of reasons, including the desire to preserve a United States outlet for Saudi Arabian crude oil, SRI joined the discussions with Shell and Texaco, with the knowledge and consent of its parent company, Saudi Aramco. (Shulman Decl., Tab 9, containing PX 37; Woelfel Depo., pp. 51[illegible] 58; PX 43; Woelfel Depo., pp. 59-66; PX 54.)

Response by Defendants: Defendants maintain that only SRI is a defendant to this action, and therefore any and all references to Saudi Aramco are not relevant and not material. Further, SRI only joined the discussions with respect to Motiva and plaintiffs provide no support for any broader proposition.

10. As the discussions progressed in the Spring of 1996, Texaco, Shell and Star formed a "synergy team," which conducted an analysis to determine what expenditure reductions could be obtained from a combination of their downstream assets. (Shulman Decl., Tab 10, containing Berry Depo., pp. 12-15; PX 34; Berry Depo., pp. 64-65; Boles Depo., pp. 19-23; Tilton Depo., pp. 36-38.)

Response by Defendants: Defendants agree to the factual proposition so long as the word "efficiencies" is inserted before the words "expenditure reductions." Even in the face of clear document and testimony support establishing the synergy team's review of potential efficiencies and cost savings associated with the formation of the joint ventures, plaintiffs refuse to use the word "efficiencies" anywhere in the joint stipulation, thus resulting in a misleading an incomplete factual assertion.

11. In negotiating the combination, the purpose of the defendants was to increase the profitability of their refining and marketing businesses. (Shulman Decl., Tab 11, containing PX 42; Deposition of James Morgan ("Morgan Depo."), Vol. 1, pp. 89-91; PX 273 at p. 20565; Deposition of Louise Nemanich ("Nemanich Depo."), pp. 92-94; Tilton Depo., p. 70; PX 271; Woelfel Depo., p. 146.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. The purpose of discussing a potential joint venture among defendants was to analyze and determine what efficiencies and expenditure reductions could be obtained from a combination of their downstream assets.

12. From the outset of the discussions, Shell and Texaco insisted that the Shell and Texaco brands would both be preserved and separately marketed under any combination of defendants' downstream assets. Any combination would be required to market, preserve, and promote both Shell-branded gasoline and Texaco-branded gasoline. The brands themselves would not be combined. (Shulman Decl., Tab 12, containing Berry Depo., pp. 26-27; Tilton Depo., p. 26; PX 35 at p. 9014.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. Plaintiffs already have stipulated, and the deposition testimony supports, that the Brand Management Protocols generally required that both the Shell brand and the Texaco brand would be preserved, that both would be treated equally and that neither brand would receive preferential treatment over the other brands. (Uncontroverted Fact No. 55).

13. The defendants believed that they would have a "first mover" advantage in obtaining regulatory approval for their combination if they combined before their competitors did so. (Shulman Decl., Tab 13, containing PX 35 at p. 9012; Berry Depo., p. 73; Williams Depo., pp. 63-65.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. Defendants admit that one Texaco representative testified that the advantages of consolidation were "probably" discussed at a meeting. Defendants also admit that a Shell representative testified that it was his opinion that there were advantages to initiating a joint venture and being the first to do it. Plaintiffs provide no additional support in the form of testimony from an SRI representative. Defendants further object to the expression "first mover" as irrelevant, non-material and prejudicial.

14. From the outset of their discussions, the defendants anticipated and understood that whatever combination they formed would be subject to government regulatory review, such as by the Federal Trade Commission. (Shulman Decl., Tab 14, containing PX 58 at p. 2409; Barnes Depo., pp. 39-40; PX 72 at p. 12616; Berry Depo., p. 96; Boles Depo., p. 27; PX 88 at p. 775; Nemanich Depo., p. 81.)

Response by Defendants: Defendants readily admit that they understood that the formation of the joint ventures would be subject to FTC review. Defendants cannot agree to this proposition as a stand-alone fact, however, because plaintiffs refuse to list as uncontroverted the extent of the federal and state regulatory approval of both joint ventures, thus making this assertion misleading. (See Defendants' Uncontroverted Facts Nos. 26-28).

15. During the pre-formation analysis of the joint ventures, Texaco, Shell and SRI executed confidentiality agreements, which provided that any copies of documents or information exchanged would be returned to the producing party or discarded. (Shulman Decl., Tab 15, containing PX 335; Barnes Depo., pp. 115-17.)

Response by Defendants: Defendants admit that they signed confidentiality agreements concerning the return of copies of documents reviewed during the pre-formation analysis of the joint ventures. Defendants cannot agree to

this proposition as a stand-alone fact, however, because plaintiffs attempt to use this fact to suggest that documents were destroyed and/or not produced to the FTC, thus making this assertion misleading.

16. Pursuant to the confidentiality agreements, in the course of their discussions, defendants established data rooms as depositories for the documents that were used in their discussions. (Shulman Decl., Tab 16, containing PX 83; Barnes Depo., pp. 64-67; Berry Depo., pp. 90-91; PX 84; Boles Depo., pp. 88-93; Nemanich Depo., pp. 98-102.)

Response by Defendants: Defendants agree to the factual proposition so long as reference is made to the synergies that were analyzed by the parties at this time, and which analysis was one of the reasons for the establishment of the data room. Plaintiffs refuse to concede that the documents contained in the data rooms were used to analyze synergies, thus making this assertion misleading. (Defendant Uncontroverted Fact No. 23).

17. The documents in the data rooms were not submitted by defendants to the FTC during its review. Under the confidentiality agreements, they were either returned to the producing parties or destroyed. (Shulman Decl., Tab 17, containing Nemanich Depo., pp. 100-01; Barnes Depo., pp. 115-17.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. Ms. Nemanich testified that she had no knowledge of any documents being destroyed; in fact she testified that she had no knowledge of Shell documents and had returned the keys to the room containing Texaco documents to legal counsel. Mr. Barnes also testified that he had no knowledge of any documents being destroyed. He also testified that he did not recall the language of the confidentiality agreements. Mr. Williams testified unequivocally that no original documents were destroyed. (Williams Dep. 90). Moreover, plaintiffs have no support

for any allegation that the documents in the data room were not submitted to the FTC. In fact, the companies did not place original documents in the data room and the originals remained with the parent corporations. All of these documents were subject to FTC requests.

18. During the negotiations, Saudi Aramco received reports from SRI, gave instructions to SRI, and participated in direct discussions with Shell and Texaco. (Shulman Decl., Tab 18, containing PX 11 at pp. 4511-13; PX 63 at p. 1627; PX 128; PX 133; PX 134 at pp. 3174-75, 3179; PX 159; PX 181; PX 186 at pp. 1502-04; PX 202; PX 207; PX 99; PX 100; PX 126 at p. 3598, 3601; PX 164; PX 166; PX 171; PX 175; PX 176; PX 178; PX 182; PX 183; PX 185; PX 194; PX 195; PX 204; PX 205; Barnes Depo., pp. 13-15, 69-72; Woelfel Depo., pp. 19-20.)

Response by Defendants: Defendants maintain that only SRI is a defendant to this action, and therefore any and all references to Saudi Aramco are not relevant and not material. Defendants cannot admit to this proposition to the extent that it suggests that SRI participated in any discussion unrelated to Motiva or that Saudi Aramco received reports, gave instructions or participated in discussions relating to Motiva.

19. Aramco's purpose in the formation of The Alliance was to secure a continuing outlet in the United States for Saudi Arabian crude oil. Establishing satisfactory supply agreements with The Alliance was critical for Aramco, a deal-breaker issue. (Shulman Decl., Tab 19, containing PX 37; PX 43; PX 54; PX 123 at p. 3210; PX 160 at p. 423; PX 181 at p. 1478; PX 201; Woelfel Depo., pp. 33-36; Williams Depo., pp. 138-40.)

Response by Defendants: Defendants maintain that only SRI is a defendant to this action, and therefore any and all references to Saudi Arabia are not relevant and not material. Defendants cannot agree to this proposition to the extent that it refers to establishing supply agreements with Equilon and

Motiva because plaintiffs use "Alliance" to refer to both Equilon and Motiva and the only crude supply arrangements that were ever discussed and ultimately agreed to were between SRI and Motiva alone. Defendants further object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

E. THE STRUCTURE OF THE ALLIANCE

20. The formation of The Alliance did not constitute a merger. SRI, Shell, and Texaco continued as they were before the formation of The Alliance, except for the specific downstream assets contributed to The Alliance. (Shulman Decl., Tab 20, containing PX 1 at p. 6; PX 5 at p. 679.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. The documents cited by plaintiffs clearly establish that defendants have not engaged in the production, marketing and distribution of branded gasoline to retail gas stations in the United States since the formation of the joint ventures. Defendants further object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

21. The defendants were competitors before The Alliance, and they continued to be competitors, except as specifically provided otherwise in written non-compete agreements, which provided generally that defendants would not compete with The Alliance, subject to certain exceptions discussed hereafter. (Shulman Dec., Tab 21, containing PX 3; PX 4; PX 7; PX 8; PX 9; Tilton Depo., pp. 160-61; Williams Depo., pp. 96-97; Berry Depo., pp. 86-87.)

Response by Defendants: Plaintiffs' factual proposition is repetitive and unnecessary in that the parties have already stipulated that Texaco and Shell agreed not to compete with Equilon and agreed not to engage in the manufacturing and marketing of certain products in the Equilon geographic area. (Uncontroverted Fact No. 58). The parties also stipulated

that Texaco, Shell and Star agreed not to compete with Motiva and agreed not to engage in the manufacturing and marketing of certain products in the Motiva geographic area. (Uncontroverted Fact No. 59). This was entirely consistent with defendants' objective to end competition between Shell and Texaco in the Western United States solely with respect to the downstream refining and marketing of gasoline (Uncontroverted Fact No. 42), and to end competition between Shell and Star in the Eastern United States solely with respect to the downstream refining and marketing of gasoline (Uncontroverted Fact No. 45). Defendants object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

22. In a number of respects, The Alliance was not a fully integrated combination of defendants' downstream operations. For example, in forming The Alliance, Shell did not contribute its Deer Park, Texas, refinery, but retained ownership of the Deer Park refinery separate and apart from The Alliance. (Shulman Decl., Tab 22, containing Berry Depo., pp. 28-30; Boles Depo., p. 61; Morgan Depo., Vol. 2, pp. 294-96; Williams Depo., p. 83.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. Defendants also do not agree to the plaintiffs' conclusory factual assertion. As defendants establish, the joint ventures are full economic integrations of the partners' domestic downstream assets and operations. Shell could not contribute its partial interest in the Deer Park refinery that it co-owns with PEMEX – the Mexican national oil company – because PEMEX would not agree to that arrangement. (Defendant Uncontroverted Fact No. 44). Besides, the Deer Park refinery does not produce branded gasoline. (*Id.*). Nor are there any marketing assets affiliated with the Deer Park refinery. (*Id.*). Defendants further object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

23. Likewise, Shell and Texaco did not include their chemicals businesses in The Alliance. (Shulman Decl., Tab 23, containing Berry Depo., pp. 30-31; Boles Depo., p. 78; Tilton Depo., pp. 156-57; Williams Depo., p. 83.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition for the following simple reason: Texaco did not have a chemicals business to contribute to the joint ventures. (Tilton Dep. 158). Not surprisingly, plaintiffs do not cite to this page. Defendants further object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

24. Nor did Shell and Texaco include their aviation fuel businesses in The Alliance, although they permitted Equilon to engage to some extent in the aviation fuels business. (Shulman Decl., Tab 24, containing Berry Depo., pp. 29-32; Boles Depo., pp. 76-77; Morgan Depo., Vol. 1, pp. 51-54; Morgan Depo., Vol. 2, p. 203; Tilton Depo., p. 157; Williams Depo., pp. 80-83.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. Defendants admit that the aviation businesses were not included in the joint ventures because they were global businesses. (Defendants' Uncontroverted Fact No. 42). Only Mr. Boles and Mr. Morgan provided testimony on Equilon's involvement with the aviation fuels business. Mr. Boles testified that he was not familiar with "the specifics" (Boles Dep. 76), while Mr. Morgan testified that the aviation business is "more of a global business" (Morgan Dep.54). Defendants further object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

25. In forming The Alliance, the defendants negotiated "sole risk" provisions, which permitted them to acquire and operate refining ventures in competition with The Alliance if The Alliance companies declined to make such investments.

(Shulman Decl., Tab 25, containing Barnes Depo., pp. 57, 144-45; Berry Depo., pp. 86-87; Williams Depo., pp. 96-97.)

Response by Defendants: Defendants maintain that any reference to a sole risk provision is not relevant and not material. Furthermore, Mr. Barnes testified that sole risk marketing provisions were rejected. (Barnes Dep. 144-45). Moreover, a reading of the sole risk refining provisions indicate that the plaintiffs have mischaracterized the manner in which the provisions operate. Defendants further object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

26. The defendants excluded from The Alliance all of their international refining and marketing operations, so as to limit The Alliance's operations exclusively to the United States. (Shulman Decl., Tab 26, containing Morgan Depo., Vol. 1, pp. 118-20; Tilton Depo., pp. 157-58.)

Response by Defendants: Defendants readily admit that the international and refining operations of the partners were not included in the joint ventures, which consolidated the downstream U.S. refining and marketing assets of the partners. (Defendants' Uncontroverted Fact No. 42). The inclusion of the international businesses was never considered. Defendants dispute plaintiffs' conclusory and argumentative fact. Defendants further object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

27. In addition, the defendants agreed that Texaco and SRI would each have the right to acquire and operate one United States oil refinery in competition with The Alliance. (Shulman Decl., Tab 27, containing Tilton Depo., pp. 161-62; Williams Depo., pp. 143-44.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. Furthermore, Mr. Tilton testified that SRI and Texaco could operate a "comparable business" to the Deer

Park refinery. Deer Park is a joint venture between Shell and Mexico and does not compete with the joint ventures. Neither Texaco nor SRI have chosen to operate a "comparable business" – Mr. Tilton makes no reference to an additional refinery in competition with the joint ventures. (Tilton Dep. 161-62). Mr. Williams could only testify that he "think[s]" the partners came to some agreement regarding participating in their own independent ventures. (Williams Dep. 144). Defendants further object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

28. SRI also remained free to compete against Equilon in refining and marketing in the Western United States. (Shulman Decl., Tab 28, containing Barnes Depo., pp. 140-44; PX 100; Woelfel Depo., pp. 93-94; PX 134 at p. 3178; Woelfel Depo., p. 117.)

Response by Defendants: Defendants maintain that this factual proposition is not relevant and not material because SRI is not a partner in the Equilon joint venture. (Barnes Dep. 144).

29. Texaco initiated the standstill agreement with Shell because Texaco wanted it clearly understood that the extent of Texaco's interest in negotiations with Shell was limited to the creation of a downstream venture. (Shulman Decl., Tab 29, containing Berry Depo., p. 84; Morgan Depo., Vol. 1, pp. 145-47; Tilton Depo., pp. 22-24.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. As Mr. Morgan, Mr. Tilton and Mr. Berry all testified, Texaco negotiated for a standstill agreement because it did not want Royal Dutch Shell to make an unsolicited offer for Texaco, Inc. (Morgan Dep. 145; Tilton Dep. 22; Berry Dep. 84). Defendants admit that only the downstream marketing and refining assets were included in the joint ventures. (Defendants' Uncontroverted Facts Nos. 29, 35). Plaintiffs have stipulated to this fact as well.

(Uncontroverted Facts Nos. 48-50). Defendants further object to this proposed fact on the ground that it is not relevant and not material.

30. In order to govern Equilon and Motiva, the parties created Members Committees. The Members Committee for Equilon consisted of four representatives for Shell and three for Texaco; the Members Committee for Motiva consisted of two members each for SRI, Shell and Texaco. (Shulman Decl., Tab 30, containing PX 2, pp. 58, 72; PX 6 at p. 743; Woelfel Depo., pp. 17-19.)

Response by Defendants: Defendants agree to the factual proposition so long as the word "monitor" is used instead of "govern." (Defendants' Uncontroverted Fact No. 52). The Members Committees of Motiva and Equilon have no responsibility for or role in the day to day governing of Motiva and Equilon. (Defendants' Uncontroverted Facts Nos. 53, 55) By refusing to agree to include the full facts associated with the operation of the Members Committee, plaintiffs instead assert a misleading and incomplete fact.

31. The SRI members on the Motiva Members Committee were chosen by Aramco and were Aramco executives. (Shulman Decl., Tab 31, containing Woelfel Depo., pp. 17-19.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. The initial SRI representatives on the Motiva Members Committee were SRI's CEO and an SRI Board member. Mr. Woelfel testified unequivocally that he could not "be 100 percent sure who made that decision" to select the representatives on the Motiva Members Committee for SRI. (Woelfel Dep. 19). Defendants further maintain that only SRI is a defendant to this action, and therefore any and all references to Aramco are not relevant and not material.

32. Under the limited liability company agreements for Equilon and Motiva, "The Company Business shall be conducted by the CEO and other officers of the Company,

subject to direction by, and in accordance with policies, business plans and budgets approved by, the Members, acting by and through the Members Committee." In addition, "The Company Business shall be conducted in accordance with the Business Plan and the Annual Budget then in effect and the policies, strategies and standards established by the Members Committee." (Shulman Decl., Tab 32, containing PX 2, pp. 58, 72; PX 6 at p. 743; Woelfel Depo., pp. 17-19.)

Response by Defendants: Defendants admit that the Members Committees of Motiva and Equilon have no responsibility for or role in the day to day governing of Motiva and Equiion. (Defendants' Uncontroverted Facts Nos. 53, 55). Defendants further admit that only the CEOs of Motiva and Equilon have responsibility for the day to day operations of Motiva and Equilon. (Defendants' Uncontroverted Facts Nos. 54, 56). Mr. Woelfel only confirmed this arrangement. (Woelfel Dep. 17-19). By selective citation to the agreements underlying the joint ventures and the testimony in this case, the plaintiffs have presented a misleading "factual" presentation.

F. ALLIANCE OPERATIONS

33. At the time of its formation, The Alliance had a market share of approximately 15 percent of gasoline sales in the United States, double the size of its next largest competitor. In 39 states, The Alliance had a market share of more than 10 percent; in 15 of those states, its share exceeded 20 percent; in three states, 30 percent. On the West Coast, its share exceeded 25 percent. (Shulman Decl., Tab 33, containing PX 34 at p. 734; PX 35 at p. 9018; PX 64 at p. 2618; PX 88 at pp. 765-66.)

Response by Defendants: Defendants maintain that the joint venture market shares are not relevant and not material because the plaintiffs have not asserted a claim under the rule of reason. Defendants further object to this proposed

fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

34. Equilon and Motiva have introduced no fundamental new products. (Shulman Decl., Tab 34, containing Berry Depo., p. 48; Boles Depo., p. 36; Morgan Depo., Vol. 1, pp. 67-69; Tilton Depo., pp. 35-36.)

Response by Defendants: Plaintiffs' proposed fact is contradicted by the record. In fact, both Equilon and Motiva have introduced new products; Equilon has introduced hundreds of new products. (Defendants' Uncontroverted Facts Nos. 68-69). Plaintiff does not define what a "fundamental new" product is.

35. Both Equilon and Motiva have used a separate advertising agency for Shell branded gasoline and a separate advertising agency for Texaco branded gasoline. (Shulman Decl., Tab 35, containing Berry Depo., pp. 39-40, 114; Burch Depo., pp. 31-32; Darnley Depo., pp. 9-10; Morgan Depo., Vol. 1, pp. 39-41; Tilton Depo., pp. 29-30; Williams Depo., p. 94.)

Response by Defendants: By a selective citation to the record, plaintiffs have presented a misleading fact. Defendants note that advertising was not merged because not all of the Texaco and Shell assets worldwide were merged. Thus, there were international implications to combining the advertising function. (Burch Dep. 32; Tilton Dep. 29-30). Neither company wanted to see the value of its brand degraded in any way. (Morgan Dep. 40).

36. Within a relatively short time after their formation, Equilon and Motiva implemented a practice of charging the same price for the Shell and Texaco brands of gasoline in each of the pricing areas into which Equilon and Motiva had divided their geographic spheres of operations. (Shulman Decl., Tab 36, containing PX 336; Berry Depo., pp. 42-44, 139; Burch Depo., pp. 43-44; Darnley Depo., pp. 19-21; Morgan Depo., Vol. 1, pp. 34-35; Williams Depo., pp. 23-24.)

Response by Defendants: The parties have already stipulated that after the formation of Equilon and Motiva, the pricing was consolidated so that one person at Equilon set prices for both the Shell and Texaco brands in any given pricing area, and one person at Motiva set prices for both brands in any given Motiva pricing area. (Uncontroverted Fact No. 62). Moreover, it is irrelevant whether the pricing was the same or different for the two brands. Indeed, any decision-making or conduct as to pricing post-formation is entirely irrelevant and that plaintiffs do not claim any pre-formation agreement concerning how pricing would be handled post-formation.

37. Defendants implemented their price-fixing in conjunction with a joint program called the Strategic Marketing Initiative, which was developed by Equilon, Motiva, and related service companies as an Alliance-wide program; called for price-fixing as a means of "price optimization"; and was regularly reviewed with the Members Committees of both Equilon and Motiva. (Shulman Decl., Tab 37, containing PX 192; PX 236; PX 249; PX 251; PX 254; PX 255; PX 283; PX 284; PX 286; Berry Depo., pp. 43-44, 51-53, 112-13, 127-29, 134-37, 177-78, 182-83; Burch Depo., pp. 83, 92-93, 100-02, 126-27; Tilton Depo., pp. 147-52.)

Response by Defendants: Defendants object to plaintiffs' continued reference to the prejudicial expression "price-fixing" and deny that they ever engaged in any such conduct. Further, Defendants deny that the citations provided by plaintiffs support the factual proposition. "Price Optimization" was included as a bullet point reference in PX 192 under the heading "Fourth Quarter Priorities." (PX 192). Mr. Berry testified what SMI and price optimization meant, namely, that SMI or Strategic Marketing Initiative was an attempt by the joint ventures to put the Shell and Star marketing assets and organizations together and that price optimization referred to establishing the same price in the same marketing areas. (Berry Dep. 134-36). He also offered

that there could have been an exchange of property among wholesalers that may have influenced pricing decisions. (*Id.* at 136). Mr. Tilton testified that price optimization was the process by the joint ventures for implementing the integration of the marketing processes for the joint ventures participants. (Tilton Dep. 150-53). Defendants further object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

38. From September 1, 1998, to mid-April, 1999, the price of crude oil remained in the area of roughly $12 per barrel, declining to under $10 per barrel during January and February of 1999. Equilon and Motiva, however, raised dealer tankwagon prices for Shell and Texaco branded gasoline. For example, in Los Angeles, Equilon raised its dealer tankwagon price for branded Shell and Texaco gasoline from $.62 per gallon to $1.02 per gallon in the same time period. In Portland, Oregon, and Seattle, Washington, Equilon's price went from below $.60 to above $.90 in the same time period. In Chicago, Illinois, Motiva's dealer tankwagon price went from $.55 to $.75 for Shell and Texaco branded gasoline in the same time period. Generally, such increases occurred in areas where Equilon and Motiva had larger market shares, especially on the West Coast. (Shulman Decl., Tab 38, containing PX 336; PX 337.)

Response by Defendants: Defendants maintain that any discussion of crude oil prices in relation to dealer tankwagon prices for Shell and Texaco branded gasoline is not relevant and not material because plaintiffs have not alleged a claim under the rule of reason Moreover Plaintiffs lack any factual support to establish a direct correlation and their own expert testified that he can show no causation between the change in prices and the joint ventures. In fact, plaintiffs' expert willingly changed the wording of his report during his deposition to make crystal clear that he was not opining on whether formation of the ventures in any way caused prices to rise post-formation.

39. After its formation, The Alliance eliminated expenses that had become duplicative or redundant because of the combination, such as by layoffs, elimination of positions, and closing of offices. (Shulman Decl., Tab 39, containing Berry Depo., pp. 101-02; Boles Depo., pp. 33-34, 115-18; Burch Depo., pp. 132-35; Darnley Depo., pp. 86-87.)

Response by Defendants: Defendants maintain that any discussion post-formation of the elimination of expenses in the form of layoffs or office closings is not relevant and not material. The relevant inquiry is whether the parties formed the respective joint ventures with the intention of capturing efficiencies and synergies associated with the formation. Defendants object to the implication that the efficiencies achieved related solely to eliminating duplication or redundant expenses. To be sure, the efficiency analysis shows far more than this and plaintiffs' own expert admitted that even though he is generally skeptical about efficiencies, the efficiencies here were "real." The record evidence establishes unequivocally that the joint ventures were formed only after the partners undertook an extensive analysis showing approximately $800 million in potential efficiencies and synergies from integrating gasoline production and marketing. (Uncontroverted Fact No. 39; Defendants' Uncontroverted Facts Nos. 10-21). Defendants further object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

40. In addition, The Alliance avoided capital expenditures that the defendants would have made had they still remained in competition with each other. (Shulman Decl., Tab 40, containing Burch Depo., pp. 67-68; PX 222 at pp. 1919-20; Burch Depo., pp. 75-77; Tilton Depo., pp. 20, 68-70.)

Response by Defendants: Defendants maintain that whether defendants avoided certain costs post-formation is not relevant and not material in the slightest. Defendants also object to the suggestion that they no longer compete

with one another; plaintiffs have stipulated that Texaco and Shell branded service station operators continue to compete for customers at the pump. (Uncontroverted Fact No. 65). Plaintiffs provide no additional support in the form of testimony from an SRI representative. Defendants further object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

41. Neither Equilon nor Motiva ever directed that any of its cost savings be passed on to consumers in the form of price reductions. (Shulman Decl., Tab 41, containing Burch Depo., pp. 136, 158-59; Darnley Depo., p. 107; Morgan Depo., Vol. 1, pp. 89-91; PX 273 at p. 20565; Nemanich Depo., pp. 93-94.)

Response by Defendants: Plaintiffs' proposed fact is contradicted by the record. Mr. Morgan, contrary to plaintiffs' representation, testified that "clearly the competitive – competitive marketplace would require us to pass through some of those savings." (Morgan Dep. 93). Additionally, Ms. Nemanich testified that the $800 million "would fall to the bottom line as savings." (Nemanich Dep. 93). Defendants maintain that whether the four named deponents ever overtly "directed" that any of the cost saving associated with the formation of the joint ventures be passed on to consumers in the form of price reductions in no way equates to whether the cost savings were eventually passed on. Of course they were. In fact, there were in excess of $100 million of combined savings across Motiva and Equilon. (Darnley Dep. 108-09). Plaintiffs' representation to the contrary is disingenuous at best and blatantly misleading at worst.

42. The Equilon Members Committee has met six times per year; the Motiva Members Committee has met four times per year, including two or three meetings in Saudi Arabia. The representatives of defendants on the Equilon and Motiva Members Committees have had separate designated staffs at

their own companies, which receive briefings from Equilon and Motiva prior to Members Committee meetings, so as to prepare the members for the upcoming meetings. (Shulman Decl., Tab 42, containing Morgan Depo., Vol. 1, p. 11; Berry Depo., pp. 48, 150-51; PX 221; PX 224; PX 231 at pp. 3958-59; Berry Depo., p. 175; PX 253 at pp. 4054-56; Berry Depo., pp. 178-79; Tilton Depo., pp. 16-17, 168-70; Woelfel Depo., pp. 141-42.)

Response by Defendants: As an initial matter, defendants object to plaintiffs' use of a long string cite as support for all facts contained in the proposition. Defendants deny that the citations provided by plaintiffs support each factual proposition put forth by plaintiff. For example, Mr. Morgan on page 11 does not discuss the number of times the Motiva Members Committee met, the location of Members Committee meetings, the purpose of the meetings, or the role of support staff in advance of the meetings. He merely testified that he "believed" the Equilon Board of Directors met six times a year. (Morgan Dep. 11). Defendants maintain that whether two or three of those meetings took place in Saudi Arabia is not relevant and not material. Defendants further maintain that whether Equilon and Motiva make use of staffs to prepare for meetings is not relevant and not material in the slightest.

43. During 1999, Motiva closed 200 service station sites. Equilon has sold 350 to 400 gasoline stations since its formation. (Shulman Decl., Tab 43, containing Burch Depo., pp. 94, 96; Darnley Depo., p. 55.)

Response by Defendants: Defendants deny that the citations provided by plaintiffs support the factual proposition. Mr. Burch testified that he "believe[d]" service stations were closed and could only "guess" as to the correct number of stations. (Burch Dep. 94, 96). Likewise, Mr. Darnley testified that he did not know how many gasoline stations were closed and could only offer an approximation. (Darnley Dep. 55). In any event, defendants maintain that

any discussion post-formation of the reduction in the number of certain service stations is not relevant and not material. The relevant inquiry is whether Texaco, Shell and SRI formed the joint ventures with the intention of capturing efficiencies and synergies associated with the formation. The record evidence establishes unequivocally that the joint ventures were formed only after the partners undertook an extensive analysis showing approximately $800 million in potential efficiencies and synergies from integrating gasoline production and marketing. (Uncontroverted Fact No. 39; Defendants' Uncontroverted Facts Nos. 10-21).

44. At present, because of its agreement to be acquired by Chevron, Texaco is in discussions with Shell and SRI with regard to the dissolution of The Alliance, or the sale of Texaco's interest in The Alliance. (Shulman Decl., Tab 44, containing Tilton Depo., pp. 174[illegible] 76.)

Response by Defendants: Defendants maintain that whether Texaco is in discussions with Shell and SRI with regard to the dissolution of the joint ventures is not relevant and not material in the slightest. Defendants further object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

G. PRICE-FIXING

45. No efficiencies, cost savings, or synergies have resulted from Equilon's and Motiva's fixing the prices for Shell and Texaco branded gasolines. Whatever cost savings have resulted from The Alliance have been entirely unrelated to The Alliance's fixing prices for Shell and Texaco gasolines. (Shulman Decl., Tab 45, containing Deposition of Peter Bijur ("Bijur Depo."), pp. 78, 81; Berry Depo., pp. 44-45; Burch Depo., pp. 42-43; Darnley Depo., p. 41; Tilton Depo., p. 93; Williams Depo., pp. 26-27; Woelfel Depo., p. 44.)

Response by Defendants: Defendants object to plaintiffs' continued reference to the prejudicial expression and legal

conclusion "price-fixing" and deny that they ever engaged in any such conduct. Defendants further deny that the citations provided by plaintiffs support the factual proposition. Mr. Bijur testified that discussions of pricing did not take place and in any event, the parties never would have discussed pricing "because the market is so competitive that we could never take that into account in any calculation." (Bijur Dep. 81). Mr. Bijur offered that the synergies and cost savings associated with the formation of the joint ventures centered on consolidation of assets. (*Id.*). Plaintiffs have already stipulated that the joint ventures consolidated the price setting function after formation. (Uncontroverted Fact No. 62). Not surprisingly, the parties did not and could not anticipate cost savings associated with setting the same prices for Shell and Texaco branded gasoline pre-formation. Mr. Williams did not have an opinion on the issue. (Williams Dep. 26-27). Moreover, plaintiffs' questioning whether charging the same prices for Shell and Texaco gasoline resulted in efficiencies is a question that is not probative of whether efficiencies resulted from the marketing functions of the parents being integrated into the joint ventures. The record evidence establishes unequivocally that the joint ventures were formed only after the partners undertook an extensive analysis showing approximately $800 million in potential efficiencies and synergies from integrating gasoline production and marketing. (Uncontroverted Fact No. 39; Defendants' Uncontroverted Facts Nos. 10-21). Defendants further object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

46. Because each has a different package of additives, Shell and Texaco branded gasolines are separate and distinct products. (Shulman Decl., Tab 46, containing Berry Depo., pp. 35-37; Burch Depo., p. 29; Darnley Depo., pp. 10-11; Tilton Depo., pp. 30-31; Williams Depo., p. 22; Woelfel Depo., p. 43.)

Response by Defendants: The parties have stipulated that to some extent, the customers for Shell and Texaco are different, and the marketing of the two brands is targeted at different customer segments. (Uncontroverted Fact No. 66). Indeed, defendants admit that witnesses have testified that the two brands to some extent have different customer bases and have different additive packages. Witnesses also have testified to their understanding that under the antitrust laws, the two brands are the same product such that they are required to be priced the same by, respectively, Equilon and Motiva, to the same customers (dealers) in the same markets. Defendants deny that the two brands are different in any manner relevant to the analysis required by law herein.

47. Inasmuch as the claimed cost savings, synergies, and efficiencies of The Alliance were entirely unrelated to The Alliance's price-fixing, all of such claimed savings could have been achieved without The Alliance's fixing the prices for Shell and Texaco gasoline. (Shulman Decl., Tab 47, containing Bijur Depo., pp. 78, 81; Boles Depo., pp. 166-67.)

Response by Defendants: Defendants object to plaintiffs' continued reference to the prejudicial expression and legal conclusion "price-fixing" and deny that they ever engaged in any such conduct. Defendants further deny that the citations provided by plaintiffs support the factual proposition. In fact, plaintiffs' proposed fact is nothing more than pure speculation. Again, Mr. Bijur testified that the parties never would have discussed pricing "because the market is so competitive that we could never take that into account in any calculation." (Bijur Dep. 81). Mr. Bijur offered that the synergies and cost savings associated with the formation of the joint ventures centered on consolidation of assets. (*Id.*). Plaintiffs have already stipulated that the joint ventures made the decision to consolidate the price setting function after formation. (Uncontroverted Fact No. 62). Not surprisingly, the parties did not and could not anticipate cost savings associated with setting the same prices for Shell and Texaco branded gasoline pre-formation.

Moreover, plaintiffs' questioning whether charging the same prices for Shell and Texaco gasoline resulted in efficiencies is a question that is not probative of whether efficiencies resulted from the marketing functions of the parents being integrated into the joint ventures. The record evidence establishes unequivocally that the joint ventures were formed only after the partners undertook an extensive analysis showing approximately $800 million in potential efficiencies and synergies from integrating gasoline production and marketing. (Uncontroverted Fact No. 39; Defendants' Uncontroverted Facts Nos. 10-21). Defendants further object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

48. As shown in paragraph 36, *supra*, after forming The Alliance, defendants were able to raise the prices of Shell and Texaco branded gasoline during a time when crude oil prices were falling to historic lows. (Shulman Decl., Tab 48, containing PX 336; PX 337; Tilton Depo., pp. 121-23.)

Response by Defendants: Again, defendants maintain that any discussion of crude oil prices in relation to the prices of Shell and Texaco branded gasoline is not relevant and not material. Plaintiffs lack any factual support to establish a direct correlation. Moreover, defendants further deny that Mr. Tilton's testimony supports the factual proposition. In fact, Mr. Tilton says nothing about an increase in the price of either Shell or Texaco branded gasoline. (Tilton Dep. 121-23). Defendants further object to this proposed fact given plaintiff's insistence on using the non-material expression "The Alliance" instead of joint ventures.

49. In the second quarter of 1999, crude prices began to increase when OPEC raised prices by agreeing to a reduction in output. The Kingdom of Saudi Arabia, which owns Saudi Aramco and SRI, is a principal member of OPEC. At the time of the OPEC action in the second quarter of 1999, Saudi Aramco, through SRI, had in place a contractual

arrangement to supply Motiva with 450,000 barrels a day of crude oil, more than half of Motiva's requirements. (Shulman Decl., Tab 49, containing SRI Answer, ¶¶ 13, 14; Tilton Depo., pp. 121-23; Berry Depo., pp. 20-24; Burch Depo., p. 97.)

Response by Defendants: Once again, defendants maintain that any discussion of crude oil prices is not relevant and not material. Additionally, the record citations do not support the assertion in the first sentence. Defendants further maintain that only SRI is a defendant to this action, and therefore any and all references to the Kingdom of Saudi Arabia, Saudi Aramco and to OPEC are not relevant and not material. Defendants also object to this factual proposition as repetitive of plaintiffs' "Uncontroverted" Fact No. 1.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the subject matter of this action.

2. In the formation and operation of Equilon and Motiva, defendants have agreed, combined, and conspired to fix, raise, peg, and stabilize the prices for branded Shell and Texaco gasoline.

3. Equilon and Motiva are not sufficiently integrated ventures to avoid application of the *per se* rule against price-fixing or the prohibition of price-fixing under the quick look rule of reason.

4. The alleged efficiencies of Equilon and Motiva were not conceived by defendants with the intent of creating a benefit for consumers, and there is no evidence that any of such claimed efficiencies have been of benefit to consumers, or are likely to be so.

5. The price-fixing of branded Shell and Texaco gasoline implemented by defendants through Equilon and Motiva is wholly unrelated to any claimed efficiencies of defendants' formation or operation of The Alliance, and therefore cannot avoid application of the *per se* rule against price-fixing or the

prohibition of price-fixing under the quick look rule of reason.

6. Defendants' price-fixing of branded Shell and Texaco gasoline through Equilon and Motiva is a naked restraint of trade, and is not ancillary to the formation or operation of The Alliance.

7. Defendants' fixing of prices for branded Shell and Texaco gasoline through Equilon and Motiva is a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

8. Defendants' fixing of prices for branded Shell and Texaco gasoline through Equilon and Motiva is a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, under the quick look rule of reason.

PROPOSED JUDGMENT

Plaintiffs above-named having moved for partial summary judgment on the issue of whether defendants above-named have violated Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1; and the Court having reviewed the uncontroverted facts of record, and having determined that there is no genuine issue as to any material fact and that plaintiffs are entitled to judgment as a matter of law in accordance with their motion; it is hereby ORDERED, ADJUDGED, and DECREED that defendants have violated Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, by acting in concert to raise, fix, peg, and stabilize the prices of Shell and Texaco gasoline through the formation and operation of Motiva Enterprises LLC and Equilon Enterprises LLC.

DEFENDANTS' STATEMENT OF ADDITIONAL FACTS BELIEVED BY DEFENDANTS TO BE UNDISPUTED AND RESPONSES BY PLAINTIFFS

1. The downstream assets of Shell and Texaco refer to those assets used in the refining, marketing, transportation and lubricants businesses. (Tab 9, Morgan Dep. 125-26, 448; Tab 8, Leffler Dep. 145).[2] Downstream assets are not used in the exploration or production of oil. (Tab 9, Morgan Dep. 307, 449-50; Tab 8, Leffler Dep. 145).

Plaintiffs' Response: Plaintiffs believe that this is a matter of definition over which industry experts may differ, specifically as to whether transportation of unrefined crude oil is a part of the upstream or downstream business. Plaintiffs also do not consider this fact to be material to the issues presented to the Court for decision.

2. SRI was never engaged in the business of refining or marketing gasoline at either the wholesale or retail level, except through indirectly ownership of its equity interest in Star (prior to July 1998) and Motiva (since July 1998). (Tab 13, Woelfel Dep. 7-10; Tab 2, Barnes Dep. 9-11; Tab 11, Tilton Dep. 162).

Plaintiffs' Response: The record citations do not support the statement of fact. Plaintiffs know of no competent evidence in the record to support this statement.

3. Prior to the formation of the joint ventures, Shell, Texaco and Star were experiencing depressed margins, low rates of return and inadequate profits in their refining and marketing operations and, as a result, were looking to reduce costs and to maximize efficiencies. (Tab 2, Barnes Dep. 33-34; Tab 5, Boles Dep. 120; Tab 9, Morgan Dep. 89, 123-24, 398, 400, 404, 420-21; Tab 11, Tilton Dep. 67-70; Tab 4,

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[2] The exhibits attached are not attached directly to the pleading pursuant to L.R. 3.6.1 because of the significant volume of documents.

Bijur Dep. 38, 147, 228, 253-54; Tab 14, TXDAG 0000763; Tab 15, TXDAG 0000355; Tab 16, SHDAG 0022217-47).

Plaintiffs' Response: This statement is argumentative. Plaintiffs agree only that Shell and Texaco thought their returns were inadequate. Plaintiffs also do not accept that reduction of costs is the same as efficiencies.

4. Before Shell approached Texaco with this proposal, Texaco had considered collaboration with other oil companies to achieve efficiencies and remain competitive. The leading company under consideration was Chevron. (Tab 11, Tilton Dep. 111; Tab 4, Bijur Dep. 32-33; Tab 17, EQDAG 0020551; Tab 18, EQDAG 0020662).

Plaintiffs' Response: The record citations do not support the statement, and the witnesses lack first-hand knowledge or foundation sufficient to support the statement.

5. Texaco analyzed and compared the potential synergies and cost efficiencies associated with a possible Shell or Chevron collaboration. (Tab 18, EQDAG 0020662-64).

Plaintiffs' Response: See response to Paragraph Number 4. Also, the use of the terms synergies and efficiencies is argumentative.

6. Texaco believed that it would achieve greater synergies by forming a joint venture with Shell instead of with Chevron. These synergies included marketing efficiencies, increased trading opportunities, and greater cash flow and earnings. (Tab 17, EQDAG 0020552; Tab 18, EQDAG 0020662-64).

Plaintiffs' Response: The terms synergies and efficiencies are argumentative. As a matter of law, such claimed synergies or efficiencies are not material to the issue of whether defendants' combination and price-fixing violate section 1. *FTC v. Proctor & Gamble Co.*, 386 U.S. 568, 580 (1967); *RSR Corp. v. FTC*, 602 F.2d 1317, 1325 (9th Cir. 1979). Such claimed synergies and efficiencies are even more irrelevant in the light of the undisputed testimony that

no such cost savings were ever passed on to consumers in the form of lower prices. (Shulman Decl. Tab 41.)

7. Shell had independently conducted a similar analysis in considering potential joint ventures with various companies, including Amoco. (Tab 9, Morgan Dep. 129; Tab 19, SH-DAG 004425-506; Tab 20, SH-DAG 006466-73; Tab 21, SH-DAG 19010-13; Tab 22, SH-DAG 18723-815; Tab 23, SH-DAG 1266). Shell determined that there were greater cost savings opportunities with Texaco due to the geographic distribution of the assets of both companies. (Tab 12, Williams Dep. 69-70; Tab 9, Morgan Dep. 129-30; Tab 19, SH-DAG 004442-51).

Plaintiffs' Response: See response to Paragraph Number 6, *supra*.

8. After determining that a combination of certain assets with Shell promised significant synergy potential, Texaco responded positively to Shell's proposal to explore a joint venture. (Tab 9, Morgan Dep. 155-57; Tab 11, Tilton Dep. 17-21.)

Plaintiffs' Response: The record citations do not support the statement. Texaco responded positively to Shell's overtures without knowing what alleged synergies were possible.

9. As the discussions relating to the formation of the joint ventures progressed in the Spring of 1996, Texaco, Shell and Star formed a "synergy team," which conducted an analysis to determine what efficiencies and expenditure reductions could be obtained from a venture of their downstream assets. Legal counsel supervised the synergy meetings. (Tab 3, Berry Dep. 14-15; Tab 5, Boles Dep. 21-23; Tab 9, Morgan Dep. 155-56, 167-68; Tab 24, TXDAG 0000728).

Plaintiffs' Response: The record citations do not support the statement that legal counsel supervised the synergy meetings.

10. The synergy team did not share or consider individual company future plans in analyzing the potential efficiencies. (Tab 25, EQDAG 0012317).

Plaintiffs' Response: The record citation does not support the statement, which is also inconsistent with stipulated facts 37 and 38, *supra*.

11. The synergy team concluded that synergies could be obtained in the areas of Marketing, Trading and Transportation, Refining, Lubricants, and Support Services. (Tab 24, TXDAG 0000730; Tab 15, TXDAG 0000374; Tab 14, TXDAG 0000761; Tab 25, EQDAG 0012321, 12329, 12339, 12344, 12347, and 12351). Among the potential synergies were cost efficiencies obtained from the elimination of overhead and duplication of effort, as well as via a sharing of technology and operating practices. (Tab 3, Berry Dep. 16-17; Tab 5, Boles Dep. 33-34; Tab 9, Morgan Dep. 422-23, 425).

Plaintiffs' Response: See response to Paragraph Number 6, *supra*.

12. It was not believed that Shell, Texaco or Star could achieve the approximately $800 million in potential synergies on its own. (Tab 26, SRI 002412; Tab 27, SRI 005072; Tab 28, EQDAG 0007914-947).

Plaintiffs' Response: See response to Paragraph Number 6, *supra*. Also, evidence in the record suggests both that the $800 million was overstated and that the defendants in fact could have achieved substantial portions of the estimated cost savings on their own. (Shulman Decl. Tab 50, containing PX 89; *see also* Shulman Decl. Tab 7.)

13. The breakdown of the anticipated efficiencies by function was as follows:

Activity	Equilon	Motiva	Total
Transportation & Trading	225	none	225

Lubes, R & D	80	none	80
Refining	141	94	235
Marketing	68	90	158
Support Services	48	57	105
Total	562	241	803

(Tab 29, at SRI 4994; Tab 25, EQDAG 0012321; see generally Tab 26, PX 58; Tab 15, PX 111; Tab 30, PX 252; Tab 31, PX 258; Tab 32, PX 266; Tab 34, PX 329; Tab 2, Barnes Dep. 30; Tab 3, Berry Dep. 101-102; Tab 11, Tilton Dep. 93; Tab 13, Woelfel Dep. 113-115; Tab 5, Boles Dep. 26-27, 60).

Plaintiffs' Response: See responses to Paragraph Numbers 6 and 12, *supra*. In addition, prior to forming The Alliance, the defendants never intended that any of their so-called synergies or efficiencies would ever be passed along to consumers. Rather, defendants intended and anticipated that all cost savings achieved by their combination would be realized as increased profits going directly to the bottom line. (Shulman Decl. Tab 11.)

14. Among others, the synergy team identified the following opportunities for refining: consolidating Anacortes operations; reducing investment at Bakersfield refinery; sharing best practices; better purchasing for catalysts and chemicals; and savings on technical support. (Tab 25, EQDAG 0012329, 0012355-69; Tab 19, SH-DAG 004446).

Plaintiffs' Response: See responses to Paragraph Numbers 6, 12, 13, *supra*.

15. Among others, the synergy team identified the following opportunities for transportation and trading: consolidation of pipeline management, trucking operations and supply, and optimization of pipelines and trading. (Tab 35, SH-DAG005127-36).

Plaintiffs' Response: See responses to Paragraph Numbers 6, 12, 13, *supra*.

16. Among others, the synergy team identified synergies in the area of support services from consolidation, adopting best practices and economies of scale. (Tab 35, SH-DAG005137-38; Tab 17, EQDAG 0020552).

Plaintiffs' Response: See responses to Paragraph Numbers 6, 12, 13, *supra.*

17. The synergy team also identified the following opportunities for marketing: organization consolidation, greater leverage in vendor sourcing and procurement, combined credit card processing, network optimization and brand growth, advertising sourcing and sales promotion, more cost effective gasoline additive strategy and elimination of redundant research and development. (Tab 25, EQDAG 0012333-34).

Plaintiffs' Response: See responses to Paragraph Numbers 6, 12, 13, *supra.*

18. The full extent of the potential synergies in refining and marketing could not be analyzed prior to the closing of the joint venture because of antitrust considerations. (Tab 11, Tilton Dep. 93-94; Tab 6, Burch Dep. 90; Tab 17, EQDAG 0020552; Tab 36, SH-DAG 019401; Tab 37, SRI 005409).

Plaintiffs' Response: See responses to Paragraph Numbers 6, 12, 13, *supra.* In addition, the record citations do not support this statement. In fact, they put in doubt the underlying validity of the alleged estimated synergies, by showing that the persons on the synergy teams were not actually involved in refining and marketing.

19. The determination of the efficiencies was based on the complete, integrated refining and marketing operations being placed in the joint ventures. (Tab 9, Morgan Dep. 450, 453).

Plaintiffs' Response: See responses to Paragraph Number 6, 12, 13, 18, *supra.* This is an argumentative and inaccurate statement, inasmuch as The Alliance was not completely integrated. (Joint Facts Stip. ¶¶ 49-56; Shulman Decl. Tabs

20-32.) Finally, the testimony cited does not support the statement.

20. After the June, 1996 synergy team analysis and prior to the formation of the joint ventures, various committees and sub-committees were formed to identify and quantify additional synergies and cost efficiencies. (Tab 3, Berry Dep. 115).

Plaintiffs' Response: See responses to Paragraph Numbers 6, 12, 13, 18, *supra*. Also, the testimony cited does not support the statement, other than to establish that subteams were formed.

21. In forming the joint ventures, Texaco, Shell and Star intended, *inter alia*, to increase profitability, improve margins, decrease costs and obtain efficiencies and synergies in their refining and marketing businesses. (Tab 38, PX 42; Tab 17, PX 273; Tab 9, Morgan Dep. 89-91; Tab 10, Nemanich Dep. 92-93; Tab 11, Tilton Dep. 70; Tab 13, Woelfel Dep. 146).

Plaintiffs' Response: See response to Paragraph Numbers 6, 12, 13, 18, *supra*. In particular, see Shulman Decl. Tab 11, which establishes the intent of defendants not to pass any cost savings to consumers.

22. During the pre-formation analysis of the joint ventures, Texaco, Shell and SRI executed confidentiality agreements, which provided that any copies of documents or information exchanged would be returned to the producing party or discarded. The confidentiality agreements were established to insulate the work of the negotiating team from the parent companies' ongoing operations. (Tab 2, Barnes Dep. 116-17; Tab 12, Williams Dep. 86-87).

Plaintiffs' Response: The Barnes testimony cited does not support the statement, and in fact demonstrates serious credibility questions underlying Mr. Barnes' testimony. Further, the nature and extent of information exchanged and the level of executives involved in the negotiations contradict the assertion that "the confidentiality agreements

were established to insulate the work of the negotiating team from the parent companies' ongoing operations." (Joint Facts Stip. ¶¶ 37-38; Shulman Decl. Tab 18.)

23. Pursuant to the confidentiality agreements and prior to the exchange of information to analyze synergies, Texaco, Shell and SRI established separate data rooms as depositories for the documents that were used to analyze synergies and undertake the necessary due diligence. (Tab 39, SRI 002520-21; Tab 2, Barnes Dep. 64-67; Tab 3, Berry Dep. 90-91; Tab 5, Boles Dep. 90-92; Tab 10, Nemanich Dep. 98-100; Tab 12, Williams Dep. 89).

Plaintiffs' Response: This statement is argumentative with its references to synergies and undertaking due diligence.

24. Documents exchanged prior to the formation of the joint ventures were kept shielded from the parties' employees in general and particularly from any employees with responsibility for pricing of products and operations. This was consistent with the parent corporations' efforts to prevent pre-formation disclosure of competitively sensitive information to employees not involved with the synergy team. (Tab 2, Barnes Dep. 65; Tab 6, Burch Dep. 90; Tab 11, Tilton Dep. 93-94; Tab 34, JPM 0287).

Plaintiffs' Response: This statement is argumentative. The record citations do not support the statement. The work of the synergy team was also shared with top level executives of all three defendants who did have responsibility for operations. (Shulman Decl. Tabs 11, 18.)

25. The parties did not discuss what price the joint ventures would charge for gasoline upon or after formation. (Tab 5, Boles Dep. 28; Tab 12, Williams Dep. 25; Tab 11, Tilton Dep. 33; Tab 4, Bijur Dep. 81; Tab 9, Morgan Dep. 167; Tab 2, Barnes Dep. 24-25).

Plaintiffs' Response: This statement is incomplete and misleading. The defendants clearly knew that discussions of pricing would be illegal in violation of the antitrust laws. (Shulman Decl. Tab 37.) Nonetheless, shortly after the

formation of The Alliance, the defendants in fact fixed prices (Joint Facts Stip. ¶ 62; Shulman Decl. Tabs 36-38) – evidence that this was defendants' intent prior to combining to form The Alliance.

26. Prior to their formation the Equilon and Motiva joint ventures were reviewed and allowed to proceed by the United States Federal Trade Commission ("FTC") and investigated and allowed to proceed by the Attorneys General of California, Washington, Oregon and Hawaii. (Tab 41, Decision and Order of the Federal Trade Commission, *In the Matter of Shell Oil Company and Texaco Inc.*, No. 971-0026 (Federal Trade Commission, April 28, 1998); Tab 42, Consent Decree dated March 9, 1993, *California v. Shell Oil Corp.*, Case No. CV-97-9356-IH (C.D. Cal); Tab 43, Final Judgment and Consent Decree dated April 8, 1998, *Hawaii v. Texaco Inc.*, Civ Case No. 97-01633-HG (D. Haw.); Tab 44, Consent Decree dated December 19, 1997, *Washington & Oregon v. Texaco Inc.*, Case No. C97-1980-WD (W.D. Wash.); Morgan Dep. 333.).

Plaintiffs' Response: This statement is immaterial and inadmissible with regard to the issues before the Court as a matter of law. *Broadcast Music, Inc. v. Columbia Broadcasting Sys., Inc.*, 441 U.S. 1 (1979); *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 227-27 (1940); *Allied Signal, Inc. v. BF Goodrich Co.*, 183 F.3d 568 (7th Cir. 1999). There is also evidence that although anticipating regulatory review from the outset, defendants destroyed or withheld from production relevant documents in their data rooms sought by the government. (Shulman Decl. Tabs 14-17.)

27. In order for the ventures to proceed, Texaco and Shell entered into a consent decree with the FTC in which the parties agreed to divest certain refineries, light products pipelines, terminals and gas stations. They also were required to enter into a long-term supply agreement concerning a crude oil pipeline and were required to give

certain distributors an opportunity to rebrand over a period of months without penalty. (Tab 9, Morgan Dep. 333; Tab 41, Decision and Order of the Federal Trade Commission, In the matter of Shell Oil Company and Texaco Inc., No. 971-0026 (Federal Trade Commission April 28, 1998).

Plaintiffs' Response: See response to Paragraph Number 26, *supra*.

28. Like the FTC, the state governments cleared the formations, but required consent decrees providing for some divestitures in local markets and at various levels of Texaco's and Shell's refining and marketing businesses, in order to ensure that competition in certain geographic and product markets would be maintained. (Tab 42, *State of California v. Shell Oil Co. and Texaco Inc.*, No. CV-97-9356-IH (C.D. Cal. March 10, 1998); Tab 44, *State of Washington and State of Oregon v. Texaco Inc. and Shell Oil Co.*, No. C97-1980WD (W.D. Wash. Dec. 19, 1997; Tab 43, *State of Hawaii v. Texaco Inc. and Shell Oil Co.*, (D. Haw.).

Plaintiffs' Response: See response to Paragraph Number 26, *supra*.

29. Effective January 1, 1998, following FTC approval, Texaco and Shell formed Equilon, a joint venture that combined their Western United States downstream gasoline refining and marketing assets and operations. (Tab 45, Equilon Master Agreement, D000001-38; Tab 46, Equilon LLC Agreement, D000039-110; Tab 9, Morgan Dep. 25-26).

Plaintiffs' Response: The reference to FTC approval is immaterial and inadmissible. See response to Paragraph Number 26, *supra*.

30. Under the terms of the Equilon formation agreements, Texaco and Shell agreed to share the risks and losses associated with the joint venture. (Tab 45, Equilon Master Agreement, D000001-38; Tab 46, Equilon LLC Agreement, D000039-110; Tab 8, Leffler Dep. 36).

Plaintiffs' Response: This statement is argumentative in its use of the term joint venture. Equilon is a limited liability company. Defendants' use of the term "joint venture" is an attempt to invest legal significance in a term that has none under the antitrust laws. *Timken Roller Bearing Co. v. United States*, 341 U.S. 593, 597-98 (1951).

31. Retail gasoline dealers such as plaintiffs are permitted to market gasoline in specified locations in the Western United States under either the Shell or Texaco brand name pursuant to the terms of written dealer franchise agreements with Equilon. (Tab 47, Complaint ¶¶ 11-12; Tab 48, Plaintiffs' Documents 000019-34; Tab 49, 000806-22; Tab 50, 000953-65; Tab 51, 0001105-19; Tab 52, 001277-93; Tab 53, 001440-56; Tab 54, 001754-73; Tab 55, 001822-37; Tab 56, 002096-112; Tab 57, 002623-40; Tab 58, 002659-73; Tab 59, 002811-25; Tab 60, 003091-107; Tab 61, 003175-91; Tab 62, 003995-4011; Tab 63, 004103-119; Tab 64, 004310-24; Tab 65, 004502-18; Tab 66, 004882-96; Tab 67, 005492-5507; Tab 68, 005770-86).

Plaintiffs' Response: This statement is incomplete and misleading. Rights of gasoline dealers such as plaintiffs are defined not just by written dealer franchise agreements, but by other applicable laws, including Section 1 of the Sherman Antitrust Act.

32. At the time of the formation of Equilon, and pursuant, *inter alia*, to the Equilon Asset Transfer and Liability Assumption Agreements, Shell and Texaco transferred to Equilon their interests in all service stations that they previously owned in the Western United States, including both leased stations and stations that they owned and operated directly. (Tab 69, D000111-536 (Asset Transfer Agreement); Tab 47, Second Amended Complaint ¶¶ 47, 77; Tab 70, PX 13).

Plaintiffs' Response: This is a legal conclusion. Shell and Texaco did not transfer to Equilon their interests in the Shell and Texaco brands. (Joint Facts Stip. ¶¶ 53-56.)

33. Since the formation of Equilon and under the terms of the Equilon formation agreements, Shell and Texaco have exited the downstream refining and marketing of gasoline in the Western United States; they do not sell or market branded gasoline in this region on either the wholesale or retail level, and they do not own, lease or operate any retail gasoline outlets in this region. (Tab 45, Equilon Master Agreement, D000001-38; Tab 46, Equilon LLC Agreement, D000039-110); Tab 69, D000111-0536; Tab 71, PX3; Tab 72, PX4; Tab 47, Second Amended Complaint ¶ 47).

Plaintiffs' Response: This statement is not accurate. (Joint Facts Stip. ¶¶ 49-56; Shulman Decl. Tabs 20-32.)

34. SRI does not own any interest in Equilon and was not involved in its formation. (Tab 45, PX 1; Tab 46, PX 2). SRI never sold or marketed gasoline in the Western United States (or anywhere else) and it never owned, leased or operated any retail gasoline outlets in this area (or anywhere else). (Tab 13, Woelfel Dep. 7-10; Tab 2, Barnes Dep. 9-11).

Plaintiffs' Response: The deposition testimony cited does not support the statement. In addition, the statement is false. Although SRI does not own any interest in Equilon, SRI was involved in the formation of Equilon, as both SRI and Saudi Aramco were involved from the outset in the overall negotiations leading to the formation of The Alliance, of which Equilon was one part. The negotiations for Equilon and Motiva were not separate and discrete, but were part of a single overall negotiation forming The Alliance, in which SRI and Saudi Aramco participated. (Shulman Decl. Tabs 4, 9, 10, 18, 19.) In the operations of The Alliance, defendants implemented their price-fixing as part of the Strategic Marketing Initiative, an Alliance-wide program. (Shulman Decl. Tab 37.)

35. Effective July 1, 1998, following FTC approval, Shell, Texaco and SRI formed Motiva, a joint venture that combined their Eastern United States downstream gasoline

refining and marketing businesses. (Tab 73, Motiva Master Agreement, D000674-709; Tab 74, Motiva LLC Agreement, D000710-789). Motiva included all of the Eastern United States downstream gasoline refining and marketing assets of Shell and Texaco and SRI through Star. (*Id.*; Tab 9, Morgan Dep. 26; Tab 15, TXDAG 0000366).

Plaintiffs' Response: See Response to Paragraph Number 29, *supra.*

36. Retail gasoline dealers are permitted to market gasoline in specified locations in the Eastern United States under either the Shell or Texaco brand name pursuant to the terms of written dealer franchise agreements with Motiva. (Tab 47, Complaint ¶¶ 11-12).

Plaintiffs' Response: See Response to Paragraph Number 31, *supra.*

37. At the time of the formation of Motiva, and pursuant, *inter alia*, to the Motiva Asset Transfer and Liability Assumption Agreements, Shell and Star transferred to Motiva their interests in all service stations that they previously owned in the Eastern United States, including both leased stations and stations that they owned and operated directly. (Tab 75, D000790-1082; Tab 47, Second Amended Complain ¶ 57).

Plaintiffs' Response: See Response to Paragraph Number 32, *supra.*

38. Since the formation of Motiva and under the terms of the Motiva formation agreements, Shell and Texaco have exited the downstream refining and marketing of gasoline in the Eastern United States; they do not sell or market branded gasoline in this region on either the wholesale or retail level, and they do not own, lease or operate any retail gasoline outlets in this region. (Tab 73, Motiva Master Agreement, D000674-709; Tab 74, Motiva LLC Agreement, D000710-789; Tab 75, D000790-1082; Tab 47, Second Amended Complaint ¶ 57).

Plaintiffs' Response: See Response to Paragraph Number 33, *supra.*

39. Apart from its interests in Star and Motiva, SRI has never been involved in the refining or marketing of gasoline in the Eastern United States (or anywhere else), and it has never owned, leased or operated any gasoline stations in the Eastern United States (or anywhere else). (Tab 13, Woelfel Dep. 7-10; Tab 2, Barnes Dep. 9-11).

Plaintiffs' Response: See Response to Paragraph Number 34, *supra.*

40. The joint ventures provided Texaco, Shell and SRI with access to complementary strengths of the other members, which offered the opportunity for future growth. (Tab 11, Tilton Dep. 112-13; Tab 10, Nemanich Dep. 85; Tab 3, Berry Dep. 111-12 ("there was a complimentary nature of the assets"); Tab 76, SRI 002602; Tab 15, TXDAG 0000358; Tab 17, EQDAG 0020552).

Plaintiffs' Response: See Responses to Paragraph Number 6, 12, 13, 18, *supra.* The deposition testimony cited does not support the statement. The documentary citations are insufficient without testimony to support the statement.

41. A primary function of both joint ventures was to maximize overall earnings and economic return on invested capital through the safe and efficient operation of the joint ventures' refinery, marketing, lubricants and pipeline assets. (Tab 76, SRI 002602; Tab 77, TXDAG 0000005).

Plaintiff's Response: Only the first part of the statement is accurate. The language about "safe and efficient operation of the joint ventures' refinery, marketing, lubricants and pipeline assets" is not supported by the record or the two documents cited, which are quoted out of context and not supported by deposition testimony.

42. The global chemical, aviation, and marine fuels businesses were not included in the joint ventures and the parties did not consolidate international businesses. Nor did

the parties combine upstream assets. (Tab 11, Tilton Dep. 157-60; Tab 3, Berry Dep. 28-33; Tab 9, Morgan Dep. 54, 107-08, 307, 450; Tab 12, Williams Dep. 81-83).

Plaintiffs' Response: This statement is argumentative in its effort to portray the excluded chemical, aviation, and marine fuels businesses as global. The defendants excluded their domestic chemical, aviation, and marine fuels businesses from The Alliance. (Joint Facts Stip. ¶¶ 49-50; Shulman Decl. Tabs 23-24.)

43. Those downstream assets not included in the joint ventures were de minimis. (Tab 8, Leffler Dep. 143-44).

Plaintiffs' Response: This statement is taken out of context in the sense that defendants seek to use it, in arguing that Equilon and Motiva are sufficiently integrated so as to avoid *per se* or rule of reason liability for price-fixing.

44. Equilon did not obtain Shell's partial interest in the Deer Park refinery. Deer Park was already a partnership between Shell and PEMEX, the Mexican national oil company. PEMEX was unwilling to allow Deer Park to be included in the joint venture. The Deer Park refinery does not produce branded gasoline. (Tab 12, Williams Dep. 82; Tab 3, Berry Dep. 29; Tab 4, Bijur 87). There are no marketing assets affiliated with the Deer Park refinery. (Tab 3, Berry Dep. 30). Equilon runs the Deer Park refinery under an arms-length contract with the Shell-PEMEX venture. (Tab 9, Morgan Dep. 295-97).

Plaintiffs' Response: The cited testimony does not support the last sentence. The cited testimony also establishes that the output of the Deer Park Refinery does not go entirely to Mexico or The Alliance, but also goes in part to other sellers, who may resell it as branded gasoline. Mr. Morgan also lacks foundation to testify to the contents of any written agreements concerning the Deer Park refinery, which defendants have not produced in discovery.

45. If the parties' marketing assets had not been included in the joint ventures, the joint ventures would have been less economically integrated. (Tab 8, Leffler Dep. 146-47).

Plaintiffs' Response: This statement is argumentative and lacks context, and does not support the conclusion argued for by defendants, that Equilon and Motiva are sufficiently integrated to avoid *per se* and rule of reason liability for price-fixing.

46. The Texaco and Shell trademarks are in use worldwide, associated with many products, not just gasoline, and are not in use solely in the United States downstream branded gasoline market. (Tab 11, Tilton Dep. 26; Tab 6, Burch Dep. 34; Tab 4, Bijur Dep. 43-45; Tab 9, Morgan Dep. 118; Tab 12, Williams Dep. 28-30).

Plaintiffs' Response: See response to Paragraph Number 45, *supra*.

47. Equilon's and Motiva's rights to market gasoline under the Shell and Texaco brand names are exclusive. Neither Shell nor Texaco has the right to market branded gasoline in the United States. (Tab 78, Equilon Texaco Trade Name and Trademarks License Agreement; Tab 79, Motiva Texaco Trade Name and Trademarks License Agreement; Tab 80, Shell Equilon Trade Name and Trademark Contribution and Maintenance Agreement; Tab 81, Shell Motiva Trade Name and Trademark Contribution and Maintenance Agreement; Tab 82, EQDAG 0013694-98; Tab 83, EQDAG 0013871-76).

Plaintiffs' Response: This statement is argumentative and is contradicted by other evidence of record. (Joint Facts Stip. ¶¶ 48-56; Shulman Decl. Tabs 20-32.)

48. The decision of the parent corporations not to transfer ownership of the Texaco and Shell trademarks was related to the global nature of the trademarks, the need for Shell and Texaco to protect the reputation of the trademarks and required by law. (Tab 11, Tilton Dep. 26-27; Tab 4, Bijur

Dep. 43-45, 168-69; Tab 9, Morgan Dep. 456-57; Tab 17, EQDAG 0020559; Tab 84, SH-DAG 012616-17).

Plaintiffs' Response: The evidence cited does not support the statement. Although the testimony does refer to global use of the trademarks and the desire of Shell and Texaco to protect the reputation of the trademarks, the evidence is wholly insufficient to establish that Shell and Texaco licensed the brands for legal reasons; and the evidence further affirmatively shows that Shell and Texaco licensed the brands because of the anticipated future dissolution of The Alliance.

49. There would have been costs incurred if the Shell brand had been eliminated as part of the formation of the joint ventures. (Tab 8, Leffler Dep. 108-09).

Plaintiffs' Response: This statement is argumentative and incomplete. It does not provide support for defendants' argument that it was more efficient for defendants to maintain and market the existing Shell and Texaco brands than it would have been for defendants to create a new brand for The Alliance.

50. There would have been costs incurred if the Texaco brand had been eliminated as part of the formation of the joint ventures. (Tab 8, Leffler Dep. 108-09).

Plaintiffs' Response: See response to Paragraph Number 49, *supra*.

51. There would have been costs incurred if a third or separate brand had been created as part of the formation of the joint ventures. (Tab 4, Bijur Dep. 168-69; Tab 8, Leffler Dep. 108-09).

Plaintiffs' Response: See response to Paragraph Number 49, *supra*.

52. In order to monitor Equilon and Motiva, the parties created Members Committees. The Members Committee for Equilon consisted of four representatives for Shell and three for Texaco; the Members Committee for Motiva consisted of

two members each for SRI, Shell and Texaco. (Tab 46, Equilon LLC Agreement, D000039-110; Tab 74, Motiva LLC Agreement, D000710-789).

Plaintiffs' Response: This statement is argumentative, incomplete, and misleading. The Members Committees were not created to "monitor" Equilon and Motiva. They were created to oversee and govern Equilon and Motiva by setting and approving policies, budget plans, budgets, strategies, and standards. (Shulman Decl. Tab 32.)

53. The Members Committee of Motiva has no responsibility for or role in the day to day operations of Motiva. (Tab 11, Tilton Dep. 14; Tab 6, Burch Dep. 151; Tab 74, Motiva LLC Agreement, D000710-789).

Plaintiffs' Response: See response to Paragraph Number 52, *supra*. Also, the testimony and documentation cited do not support the statement; and Mr. Burch, who has never been a member of the Members Committee of Motiva, lacks foundation to testify concerning the role or responsibility of the Members Committee.

54. The CEO of Motiva has responsibility for the day to day operations of Motiva. (*Id.*).

Plaintiffs' Response: See responses to Paragraph Numbers 52, 53, *supra*.

55. The Members Committee of Equilon has no responsibility for or role in the day to day operations of Equilon. (Tab 11, Tilton Dep. 15; Tab 46, Equilon LLC Agreement, D000039-110).

Plaintiffs' Response: See response to Paragraph Number 52, *supra*. In addition, the evidence cited does not support the statement.

56. The CEO of Equilon has responsibility for the day to day operations of Equilon. (*Id.*).

Plaintiffs' Response: See response to Paragraph Number 52, *supra*.

57. Since SRI does not participate in the Equilon joint venture, there is no restriction of any kind on SRI's right to compete against Equilon in refining or marketing gasoline in Equilon's area of operation. (Tab 85, SRI 003178; Tab 13, Woelfel Dep. 93-94, 117; Tab 2, Barnes Dep. 142-44).

Plaintiffs' Response: This statement is argumentative. Although SRI may be free to compete with Equilon in refining or marketing gasoline in Equilon's area of operation, it is not true that SRI does not participate in Equilon or that SRI's non-participation is the reason that SRI has freedom to compete against Equilon. A number of policies and activities have been undertaken on an Alliance-wide basis, such as the Strategic Marketing Initiative, which has led to defendants' price-fixing. SRI is involved in reviewing and approving such Alliance-wide activities, which necessarily affect Equilon. (Shulman Decl. Tab 37.)

58. Since their formation, Equilon and Motiva have been responsible for the refining, marketing and distribution of Shell and Texaco gasoline in their respective regions. (Tab 40, Broderick Declaration ¶ 4).

Plaintiffs' Response: As of the time plaintiffs first responded to this statement on July 25, 2001, defendants had provided plaintiffs with no record citations to support this statement. The defendants at that time provided plaintiffs only with a citation to "Broderick Declaration ¶ 4." Plaintiffs first saw this declaration on July 26, 2001, and objected to defendants' efforts to use this declaration to establish any fact for purposes of these proceedings. In an order of September 13, 2001, this Court afforded plaintiffs the opportunity to depose Mr. Broderick, which plaintiffs did on September 21, 2001. Mr. Broderick's deposition made clear the glaring lack of foundation for the many opinions in Mr. Broderick's declaration. Mr. Broderick, whose education ended with his undergraduate degree, was never an employee of Texaco, SRI, or Motiva (Deposition of Richard

A. Broderick ("Broderick Dep.") 18, 21);[3] had no position on either the Equilon or Motiva Members Committee and attended no Members Committee meetings (*id.* 22); and had absolutely no role or participation in the formation of The Alliance, and had nothing to do with estimating any of the claimed cost savings of The Alliance prior to its formation (*id.* 18-20). His declaration was prepared by counsel (*id.* 54-56); he has done no backup studies or analyses to support any of the statements in his declaration, leaving no written work papers to use in testing his many opinions (*id.* 56-57); and he has not quantified or even tried to quantify the claimed cost savings to which he opines (*id.* 68, 70). He has never been an officer of Equilon or Motiva (*id.* 90-91), never attended regular management meetings with officers (*id.*), and is unfamiliar with the basic agreements providing for the governance of Equilon and Motiva (*id.* 66-67), about whose management he opines. Mr. Broderick's primary opinion is not really relevant to the issues now before the Court. The thrust of his testimony is that it would have been impracticable and inefficient for Shell and Texaco to set prices for Equilon and Motiva. (*Id.* 60-61.) Setting aside the absence of foundation for such testimony as to Texaco and Motiva, the testimony itself does not prove, or even tend to show, that it was essential for the Alliance to fix prices for Shell and Texaco branded gasolines in order to achieve the efficiencies claimed by defendants for their combination. (Nor is it consistent with the undisputed evidence that Shell and Texaco controlled The Alliance's use of the Shell and Texaco brands.) Indeed, his testimony proves the contrary. From January to September of 1998, after the formation of Equilon, Equilon functioned with separate pricing mechanisms and organizations for the Shell and Texaco brands. The former Shell pricing department, transplanted to Equilon, set prices for Shell branded gasoline; while the

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[3] The deposition of Richard Broderick is attached as Exhibit A to the Supplemental Declaration of Andrew C. Finch ("Supp. Finch Decl.").

Texaco pricing organization, similarly transplanted to Equilon, set prices for Texaco branded gasoline. (*Id.* 24-44.) This is the testimony of Mr. Broderick: that for a period of time Equilon did not fix prices, and set prices separately for Shell and Texaco branded gasolines. Although the separate pricing was eliminated and price-fixing was implemented by September of 1998, there is absolutely nothing in Mr. Broderick's testimony, or anywhere else in this record, that such consolidation and price-fixing were necessary to achieve any claimed or anticipated efficiencies for The Alliance. To the contrary, all defense witnesses have testified that price-fixing had nothing to do with any expected cost savings. Moreover, even Mr. Broderick acknowledged that no cost savings were ever passed on to customers in the form of lower prices. (*Id.* 47-48.) In summary, Mr. Broderick's deposition establishes that his declaration is entitled to no weight in these proceedings.

Defendants' Reply: Plaintiffs' vague, blanket objection to the Declaration of Richard Broderick is procedurally inadequate and substantively baseless. It is absurd for plaintiffs to claim that Mr. Broderick lacks foundation for his statements. Mr. Broderick's declaration and now his deposition explain his extensive relevant experience over 34½ years at Shell and, subsequently Equilon (*see* Supp. Finch Decl. Ex. J (Broderick Dep. at 80:18)), including his personal experience in setting gasoline prices (*id.* at 86:8-19; 88:22-89-10), managing gasoline logistics, scheduling, and supply continuity (*id.* at 71:20-25; 89:4-10), managing refinery operating programs (*id.* at 72:7-13), doing supply programming work (*id.* at 7274:3-5), and being responsible for marketing operations as the Business Manager for Shell's Western Region (*id.* at 76:25-78:5). In addition, at Equilon since its formation, Mr. Broderick was personally responsible for the consolidation of the Shell and Texaco pricing systems into a new system that supports both Motiva and Equilon pricing. *Id.* at 68:9-14; 69:16-17. *See also* Broderick Decl. 2.

It is a telling admission for plaintiffs to assert that Mr. Broderick's declaration is "not really relevant to the issues" before the Court because it addresses whether it would have been inefficient for Shell and Texaco to set gasoline prices for Equilon and Motiva. This shows that plaintiffs are not challenging the pre-formation decision by the joint venture parents to consolidate the price-setting function in Equilon and Motiva, but are instead challenging only the independent, post-formation decisions by Equilon and Motiva, for the purpose of complying with the Robinson-Patman Act, to charge the same prices for Shell- and Texaco-branded gasoline to the same class of trade in the same geographic areas.

Despite that apparent admission, however, plaintiffs continue to argue that there is "nothing" in Broderick's testimony or elsewhere in the record to show that consolidation of the pricing function as part of the integration of the downstream operations of Shell, Texaco, and SRI (with respect to Motiva) were necessary for the joint ventures to achieve anticipated efficiencies. This is flatly wrong. Both Mr. Broderick's declaration and his deposition testimony—as well as the deposition testimony of James Morgan (Finch Decl. Ex. F (Deposition of James Morgan at 323:8 to 324:3))—prove that placing pricing responsibility in the joint ventures achieved efficiencies, both in terms of cost savings and in terms of achieving an efficient organizational structure for the joint ventures. Thus, Mr. Broderick explained that the price-setting process:

> [N]eeds to be integrated within one operation. The communications that [ ] would have to—that would have to occur back and forth between Equilon and its owners to arrive at a consensus on how the price should be set would be extraordinarily cumbersome, uncompetitive, and very costly.

Supp. Finch Decl. Ex J (Broderick Dep. at 86:14-21). In summary, plaintiffs are simply incorrect to argue that the

Broderick deposition does not demonstrate that cost savings and other efficiencies resulted from the consolidation of price-setting in the joint ventures.

Finally, plaintiffs' complaint that the Broderick declaration was "prepared by counsel" is also off-base. Mr. Broderick testified unambiguously that counsel did no more than transcribe his statements. *See id.* at 54:20-55:6; 55:15-56:15.[4]

59. All Shell and Texaco branded gasoline is produced and sold by Equilon and/or Motiva. (Tab 40, Broderick Declaration ¶ 4).

Plaintiffs' Response: See response to Paragraph Number 58, *supra*.

60. The prices at which Equilon and Motiva sell gasoline are determined by the management of Equilon and Motiva, respectively. (Tab 86, SRI 002225; Tab 6, Burch Dep. 22-27, 146, 151; Tab 9, Morgan Dep. 32-37, 321; Tab 7, Darnley Dep. 18-19, 37; Tab 4, Bijur Dep. 80).

Plaintiffs' Response: This statement is misleading, incomplete, and argumentative. Defendants have known and approved, first, that the same person sets prices for Shell and Texaco branded gasolines in each Equilon and Motiva pricing area, and, second, that the same person sets the same prices for Shell and Texaco branded gasolines in each Equilon and Motiva marketing area. (Shulman Decl. Tab 37.)

61. The pricing function is an integral part of the refining and marketing operation. (Tab 9, Morgan Dep. 322-24).

Plaintiffs' Response: The testimony cited does not support the statement. It is merely the response of one executive to questioning as to why Equilon did not have separate pricing personnel for the Shell and Texaco brands. The statement is also contradicted by the overwhelming evidence that pricing

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[4] [No text in footnote 4 in original.]

of the Shell and Texaco branded gasolines had nothing to do with any of the claimed synergies or efficiencies of The Alliance (Shulman Decl. Tabs 45, 47), as well as Mr. Broderick's deposition testimony that Equilon had separate pricing for the brands from its inception until September of 1998 (Broderick Dep. 24-44).

62. The removal of the pricing function from the refining and market operation would lessen the efficiencies that might otherwise be obtained. (Tab 9, Morgan Dep. 322-34). The decision of the parent corporations to place the pricing authority with the joint ventures was related to the efficiency-producing aspects of the joint ventures. (*Id.*; Tab 40, Broderick Declaration ¶¶ 4-6).

Plaintiffs' Response: The testimony cited does not support the statement. *See also* responses to Paragraph Numbers 58, 59, 61, *supra*. Plaintiffs object to any use of the Broderick declaration for the reasons stated in their response to Paragraph Number 58.

63. At some time after their formation, Equilon and Motiva each independently decided that Texaco and Shell branded gasoline were not functionally differentiated for purposes of the antitrust laws. Equilon decided that it would charge the same DTW prices for Shell- and Texaco-branded gasoline to the same class of trade in the same geographic areas. Motiva decided that it would charge the same DTW prices for Shell- and Texaco-branded gasoline to the same class of trade in the same geographic areas. (Tab 3, Berry Dep. 42-43; Tab 9, Morgan Dep. 33-37, 59-60, 379-83; Tab 7, Darnley Dep. 35, 68-69; Tab 6, Burch Dep. 28; Tab 17, Williams Dep. 24-25).

Plaintiffs' Response: The testimony cited does not support the first sentence of this statement. In addition, insofar as defendants may be trying to justify their price-fixing as Robinson-Patman compliance, this statement is immaterial and inadmissible as a matter of law. *United States v. United States Gypsum Co.*, 438 U.S. 422 (1978). Further, defendants have waived and are estopped to assert any such

defense by, first, the failure of any defendant to include such an affirmative defense in its answer, and, second, repeated instructions to defense witnesses not to answer questions about counsel's advice on Robinson-Patman compliance, a number of which instructions are included in the deposition testimony cited. Defendants cannot omit this defense from their answers, block plaintiffs' discovery on the issue, and then raise it for the first time on their motion for summary judgment after the close of discovery. Finally, the testimony cited contains repeated references to inadmissible hearsay in the form of statements purportedly made by counsel, which hearsay is offered to prove the truth of the statements made, i.e., that Robinson-Patman compliance required defendants to fix prices.

64. The decision of the parent corporations to place the pricing authority with the joint ventures was related to the efficiency-producing aspects of the joint ventures. (Tab 9, Morgan Dep. 323-24; Tab 40, Broderick Declaration ¶¶ 4-6).

Plaintiffs' Response: The testimony cited does not support the statement, and is in fact contradicted by the overwhelming evidence that the pricing of Shell and Texaco gasoline had nothing whatever to do with any so-called efficiency-producing aspects of the defendants' combination. (Shulman Decl. Tabs 45, 47.) Plaintiffs also object to any use of the Broderick declaration for the reasons stated in their response to Paragraph Number 58.

65. Neither Texaco nor Shell participates in setting the prices for the wholesale or DTW gasoline that Equilon sells to its retail gasoline dealers. (Tab 7, Darnley Dep. 37; Tab 4, Bijur Dep. 80; Tab 40, Broderick Declaration ¶ 3).

Plaintiffs' Response: The testimony cited does not support the statement. The statement is also contradicted by the evidence regarding the Strategic Marketing Initiative (Shulman Decl. Tab 37) and the control over the brands retained by Shell and Texaco (Joint Facts Stip. ¶¶ 52-56). Plaintiffs also object to any use of the Broderick declaration

for the reasons stated in their response to Paragraph Number 58.

66. Neither Texaco nor Shell nor SRI participates in setting the prices for the wholesale or DTW gasoline that Motiva sells to its retail gasoline dealers. (Tab 6, Burch Dep. 151; Tab 4, Bijur Dep. 80; Tab 40, Broderick Declaration ¶3).

Plaintiffs' Response: See response to Paragraph Number 65, *supra*. Plaintiffs also object to any use of the Broderick declaration for the reasons stated in their response to Paragraph Number 58.

67. SRI does not own any interest in Equilon and does not participate in setting the prices for wholesale gasoline that Equilon sells to its retail dealers. (Tab 40, Broderick Declaration ¶¶ 3-6).

Plaintiffs' Response: Plaintiffs object to any use of the Broderick declaration for the reasons stated in their response to Paragraph Number 58. Also, see responses to Paragraph Numbers 34, 39, *supra*.

68. Equilon has produced between 200-500 new lubricants products since its formation. (Tab 10, Nemanich Dep. 11-13; Tab 11, Tilton Dep. 35; Tab 9, Morgan Dep. 67). Two of these products are Rotella Extended Life Coolant and Dialla-M transformer oil. (Tab 10, Nemanich Dep. 11-12, 15-16). Equilon is also working on a differentiated gasoline product. (Tab 7, Darnley Dep. 28).

Plaintiffs' Response: This statement is incomplete, misleading, and not material to the issues before the Court. Defendants have never claimed, nor is there any evidence to show, that it was necessary for them to form The Alliance in order to produce a product that each of the defendants would have been unable to produce separately. The undisputed evidence is that Equilon and Motiva have produced no fundamental new products. (Shulman Decl. Tab 34.)

69. Motiva is also responsible for new innovations. For example, Motiva started a Star Finish and Formula Finish car

wash business. Motiva introduced select convenience stores. Motiva also introduced a credit card program. (Tab 6, Burch Dep. 40-41).

Plaintiffs' Response: See response to Paragraph Number 68, *supra*.

70. Where either Motiva or Equilon obtains crude oil or other products or services from Shell, Texaco or SRI, it does so pursuant to arms' length transactions, on commercially reasonable terms. (Tab 9, Morgan Dep. 316-17).

Plaintiffs' Response: The testimony cited does not support the statement beyond crude oil purchases. The witness also is not competent to testify with respect to Motiva; and the testimony lacks foundation with regard to Equilon's purchases beyond crude oil.

71. Placing responsibility for setting gasoline DTW prices in the joint ventures achieved cost savings by allowing consolidation of pricing and related operations for both brands. (Tab 40, Broderick Declaration ¶ 5).

Plaintiffs' Response: Plaintiffs object to any use of the Broderick declaration for the reasons stated in their response to Paragraph Number 58. In addition, the statement is nothing more than unsupported opinion and conjecture with no quantitative or other support, and no showing that the witness is qualified to give the opinion. It is also directly contradicted by every higher ranking executive of defendants, Equilon, and Motiva deposed in this case, all of whom testified that pricing of Shell and Texaco branded gasolines had nothing to do with any alleged cost savings of The Alliance. (Shulman Decl. Tabs 45, 47.)

72. If Shell and Texaco, respectively, had been given responsibility for setting DTW prices of the Shell and Texaco branded gasoline, the joint ventures would have had much less control over their inventory and revenue streams, and the efficiency and responsiveness of refinery and distribution operations would have been seriously compromised. (Tab 40, Broderick Declaration ¶ 6).

Plaintiffs' Response: See responses to Paragraph Numbers 58, 71, *supra*.

73. The joint venture's relationship with its retailer network would become unworkable in a scenario where third parties (Shell and Texaco) would be setting the DTW price for gasoline sold to those retailers by Equilon and Motiva. (Tab 40, Broderick Declaration ¶ 6).

Plaintiffs' Response: See responses to Paragraph Numbers 58, 71, *supra*. In addition, Mr. Broderick is not qualified to express any opinion on dealer relations.

74. If the responsibility for setting DTW prices had not been in each joint venture, neither joint venture's management would have had the authority to make fundamental decisions affecting its financial performance. (Tab 40, Broderick Declaration ¶ 7).

Plaintiffs' Response: See responses to Paragraph Numbers 58, 71, *supra*. In addition, Mr. Broderick is not qualified to express an opinion concerning the powers, abilities, or performance of management of either Equilon or Motiva (especially Motiva, for whom he never worked).

75. The gasoline that is manufactured in refineries, distributed through pipelines and stored in tanks at distribution terminals meets generic specifications and is fungible. Additive packages are injected into the gasoline at the distribution terminals, at which time gasoline becomes branded gasoline. (Tab 3, Berry Dep. 35-37).

Plaintiffs' Response: The statement is incomplete and misleading in that the witness was responding to questioning concerning whether Shell and Texaco branded gasolines are separate products. The testimony cited is from the beginning only of his answers, which concluded by acknowledging that Shell and Texaco gasolines are separate and distinct products. (Shulman Decl. Tab 46.)

CONCLUSIONS OF LAW

1. Equilon and Motiva are each single economic entities whose decisions cannot constitute violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. Equilon and Motiva are integrated joint ventures for the purpose of refining, marketing and distributing branded gasoline.

3. Texaco and Shell formed Equilon and Shell, Texaco and SRI formed Motiva with the intent of achieving synergies and cost efficiencies.

4. Neither Equilon nor Motiva constitutes an unlawful price fixing conspiracy for purposes of Section 1 of the Sherman Act.

5. The price-setting responsibility of each joint venture is sufficiently related to the efficiency-producing aspects of the joint ventures and thus not illegal *per se* under Section 1 of the Sherman Act, nor violative of the Sherman Act under a "quick look" analysis.

PROPOSED ORDER

This Court hereby grants defendants' motion for summary judgment and denies plaintiffs' motion for partial summary judgment. IT IS SO ORDERED.

Respectfully submitted,

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Nos. 04-805 and 04-814

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IN THE

Supreme Court of the United States

TEXACO INC.,

Petitioner,

v.

FOUAD N. DAGHER *ET AL.*,

Respondents.

SHELL OIL COMPANY,

Petitioner,

v.

FOUAD N. DAGHER *ET AL.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER SHELL OIL COMPANY'S OPENING BRIEF

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QUESTION PRESENTED

Whether pricing decisions by a lawful joint venture or its owners with respect to the venture's own products may be condemned as a per se violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

The parties to these consolidated proceedings are Petitioners Shell Oil Company (No. 04-814) and Texaco, Inc. (No. 04-805), both defendants below, and the following Respondents, all plaintiffs below: Fouad N. Dagher; Bisharat Enterprises Inc.; Alfred Buczkowski; Esequiel Delagado; Mahwash Farzaneh; Nasser El-Radi; G.G.&R. Petroleum Inc.; H.J.F. Inc.; Kaleco Co.; Carlos Marquez; Sami Merhi; Edgardo R. Parungao; Ron Abel Serv. Center, Inc.; Gullermo Ramirez; Jerry's Shell Serv. Center, Inc.; Leopoloo Ramirez; Nazar Sheibaini; Sitara Management Corporation; Tinsel Enterprises Inc.; Quang Truong; Steven Ray Vezerian; Los Feliz Shell, Inc.; and Nassim Hanna. Saudi Refining Inc. was a defendant below but secured judgment in its favor on other grounds.

Petitioner Shell Oil Company is wholly owned by Shell Petroleum, Inc., a Delaware corporation, which is wholly owned by Shell Petroleum N.V., The Hague, The Netherlands. Shell Petroleum N.V. is owned 60% by Royal Dutch Petroleum Company, The Hague, The Netherlands, and 40% by The Shell Transport and Trading Company Limited, London, England. Royal Dutch Petroleum Company is a public company whose majority shareholder is Royal Dutch Shell plc, The Hague, The Netherlands (and of whose stock no other entity owns 10% or more). The Shell Transport and Trading Company Limited is wholly owned by Royal Dutch Shell plc.

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 1a-35a) is reported at 369 F.3d 1108. The District Court's opinions (Pet. App. 36a-74a) are unreported.[1]

JURISDICTION

The Court of Appeals entered its judgment on June 1, 2004. The court denied a timely petition for panel and en banc rehearing on September 15, 2004. Pet. App. 75a. The petition for a writ of certiorari was timely filed on December 17, 2004, and granted on June 27, 2005. Jurisdiction in this Court exists under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 1 of the Sherman Act, 15 U.S.C. § 1, provides in relevant part: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal."

STATEMENT

In 1998, Petitioners Shell Oil Company (Shell) and Texaco, Inc. (Texaco) formed two joint ventures that merged the companies' respective domestic gasoline refining and marketing operations and therefore eliminated competition between Shell and Texaco in the United States gasoline business. The Federal Trade Commission and several States allowed the formation of the joint ventures, and the legality of the ventures themselves has not subsequently been challenged in this or any other proceeding.

Respondents are Shell- and Texaco-branded service station

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[1] References to Pet. App. are to the appendix to Shell's certiorari petition, No. 04-814.

operators who purchased gasoline from Equilon. On behalf of a purported class of service station operators, Respondents alleged that Shell and Texaco violated Section 1 of the Sherman Act by agreeing that each joint venture would charge the same wholesale price in a given geographic trade area for the Shell and Texaco brands of gasoline now sold exclusively by that joint venture. Expressly disclaiming any reliance upon a full rule of reason theory, Respondents contended that this alleged agreement constituted a per se violation of Section 1. The District Court rejected the per se theory of liability and entered summary judgment in favor of Shell and Texaco. In a 2-1 opinion, the Court of Appeals reversed.

A. Factual Background

This case concerns two joint ventures formed by Shell and Texaco in 1998. The first, Equilon Enterprises LLC ("Equilon"), merged Shell's and Texaco's gasoline refining and marketing operations (so-called "downstream" operations) in the western United States. The second, Motiva Enterprises LLC ("Motiva"), in which Saudi Refining Inc. ("SRI") was also a partner, merged the parties' downstream operations in the eastern United States. Shell and Texaco continued to compete with each other in their domestic "upstream" operations (oil and gas exploration and production) and in both upstream and downstream operations internationally. Once Equilon and Motiva came into existence, however, Shell and Texaco no longer separately refined or marketed branded gasoline in the United States and thus no longer competed with each other in downstream domestic operations.[2]

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[2] Both courts below held that the Respondents lacked standing to pursue claims against SRI with respect to Motiva's operations because they purchase gasoline from Equilon, not from Motiva (Pet. App. 7a, 9a-11a, 69a), a determination Respondents have not

As the District Court found, Equilon was a legitimate, economically integrated joint venture, formed to reap cost savings and operating efficiencies of up to $800 million. Pet. App. 3a, 49a, 65a. That finding was undisputed by Respondents and accepted by the Court of Appeals. It was also supported by uncontroverted evidence showing that Shell and Texaco contributed substantial assets to the joint venture (including refineries, pipelines, terminals, lubricant plants, research laboratories, and thousands of service stations), and that Shell and Texaco agreed that the gains and losses of the venture would be allocated in proportion to the assets contributed to Equilon by each of the parent corporations (56% to Shell, 44% to Texaco). JA 76. Shell and Texaco each contributed its brand name to Equilon, by granting Equilon an exclusive license to sell gasoline under that brand name in the Equilon territory. Pet. App. 65a-66a.

Shell and Texaco presented their plans for the joint venture to the Federal Trade Commission, which conducted a detailed year-long investigation. Antitrust regulators in California, Hawaii, Oregon, and Washington also reviewed the proposed venture. After completing their investigations, all of these entities let the plans proceed, subject to certain limited modifications that were made. Pet. App. 3a.

After formation, Equilon itself (not Shell or Texaco) owned, refined and marketed the gasoline that it sold in the western United States under the Shell and Texaco brand names. Equilon likewise set the wholesale prices for the gasoline that it sold. Prices in each trade area were set based on conditions in that particular trade area. JA 79. The independent service station operators continued to determine, on their own, the prices to charge consumers for Shell- and Texaco-branded gasoline at the pump. JA 79.

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challenged here. Thus, only Respondents' claim against Equilon remains at issue, and this brief will largely refer to Equilon alone.